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HISTORY  
OF THE  
ENGLISH LANDED INTEREST



HISTORY  
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ENGLISH LANDED INTEREST

Its Customs Laws and Agriculture

BY

RUSSELL M. GARNIER, B.A., OXON.



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## PREFACE.

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"Si l'on veut lire l'admirable ouvrage de Tacite sur les mœurs des Germains, on verra que c'est d'eux que les Anglois ont tiré l'idée de leur gouvernement politique. Ce beau système a été trouvé dans les bois." Thus wrote Montesquieu more than a century ago, and though the position assumed by him in the first sentence has been both strenuously attacked and defended in these latter days, there are few who will deny that our English Constitution originated in the forests. Whether they were those of the Gemeindes Anger of Germany, the Ager Publicus of Rome, or the wastes of Britain, remains to be seen; but that our laws owed their beginning to the agricultural polity of nomadic nationalities, when at length they finally settled on ground hitherto left to nature's cultivation, admits of no doubt whatever. The soil of a country was at first connected with its inhabitants as a nation, and centuries elapsed before it came to be transferred to individuals. As long as the military spirit predominated, a contempt for everything connected with labour prevailed, as a natural consequence, and the land was regarded solely as a means of furnishing warlike materials. Thus we shall find that the originators of the manorial system assumed an attitude in which property in people predominated over that in land, and the tenure by which the land was held was of less importance than the jurisdiction possessed over its inhabitants. Montesquieu has also shown that the laws and ethics of a nation take their character from the nature of its soil. It was the barrenness of the Attic soil, he asserts, which established there a popular government, the fruitfulness of that of Lacedæmon which gave rise to an aristocratic form of government. Fertile countries are always

plains where the peaceful inhabitants are left without any natural means of defence against a stronger body. Barren districts, on the contrary, breed a race of men industrious, steady, courageous, and warlike; whilst islanders, confined as they are to a comparatively small area, are not so liable to oppression either from without or within as the greater empires, from which the sea cuts them off.

It is for these reasons that a History of the English Landed Interest cannot but be useful to the statesman as well as the husbandman. All the great modern writers on Constitutional Government have recognised the importance of the subject by treating largely of early English land tenure and agriculture. Though it would appear unlikely that the statecraft of to-day should repeat the mistakes of some former administration, none the less as we progress we shall discover many instances where this has occurred. Even while the ink of this last sentence is still wet, the statesmen of to-day are engaged in re-enacting one of those Small Holdings Acts which the lawgivers of the Tudor period repeatedly failed in perpetuating. The political catch-phrase "Three acres and a cow," which had so strong an influence on the rural labourer at the polling booths a few years back, is merely an altered form of that enactment which sought to establish "Four acres and a cottage" in Elizabeth's reign. The ensuing pages, if they teach no other lesson, should prove to those, who would hurry forward or alter Nature's laws regarding the land, that their task is impracticable. It is true that there are cases where the action of the foreigner in some such direction has forced us in self-defence to make exceptions; but the artificial enhancement of any nation's agricultural profits cannot be permanently beneficial, and carries with it the germs of ultimate failure.

Now although I neither pretend to expect that the perusal of this History of English Land Tenure and Agriculture will result in any discovery of bygone customs that might with advantage be resuscitated for the improvement of present systems, nor wish to see the reinstitution, for example, of pannage and other popular rights amidst the game preserves of our modern landlords, yet I am confident that our present land

reformers will learn moderation if they give more attention to the historical side of the question. Popular rights have no doubt from time to time been encroached upon by seignorial agencies, but the repeated expenditure of individual capital has long since rendered the past irrevocable, and even the Gracchi recognised that the squatters on the *Ager Publicus* were entitled to compensation for unexhausted improvements when they promulgated a scheme for their eviction.

There is another section of the public for which this book has been more especially undertaken. I allude to the Casual Reader; and it has astonished me to find, by personal experience, how many may be included under this heading. In my intercourse with the various classes engaged in some form of industry on large estates, I have frequently heard a want expressed for information on the historical side of their employment. Short, simple histories of our Land Laws, our Agriculture, our Gardening, etc., would find many readers amongst that portion of the community which frequents our Free Libraries; and some day, if I meet with any encouragement in my present undertaking, and when I have carried it down to the latest date, I hope to attempt such a work on Agriculture alone.

Frequently, when engaged in my business, but more especially two years ago, whilst writing my book on Land Agency, I had been prompted to undertake some such work as this by the discovery of much in our landed system that was incongruous and inexplicable, except when opened to the understanding by the key of history. No doubt what I have felt must have been also experienced by many others engaged in Land Agency, and I therefore venture to hope that interested readers may be found in the ranks of my profession, as well as amidst those of other practical men associated with the soil.

It remains for me, whose excuse for entering on so wide and deep a subject is based principally on qualifications attained by many years of practical experience, to offer some apology to those more fitted by scholarship and research for such an enterprise.

Lord Cathcart, in his admirable monograph on the life of Jethro Tull in the Royal Agricultural Society's Journal of last

year, has indirectly cast what savours of reproach on such as me. Of the forty-nine authors who had up to Tull's time succeeded in retaining the attention of the British public on agricultural subjects (the chief topic of discussion in the following pages), he states that seven were judges or lawyers, four bishops and clergymen, eleven scholars, college dons, or Fellows of the Royal Society, five soldiers, five land agents, four farmers, three tradesmen or citizens, two farriers, two country gentlemen, one ambassador, one dissenting minister, ten surveyors, one gardener and seedsman, and one medical man. "Truly," he adds, "it has been well said that in other things, as well as in politics, important reforms usually come from without."

In conclusion, let me acknowledge a debt of gratitude to some of those more modern authorities from whom I have obtained the chief of my information. The researches of a lifetime by Professor Rogers have rendered his works invaluable and perpetual for the historian of the future. The views of a Russian on mediaeval land tenure must be of large interest to all connected with England's soil; and when such a learned writer as Mr. Vinogradoff makes public his ideas in book form, it goes without saying how valuable I have found him for the purpose in hand. Every line of Messrs. R. E. Prothero's & E. Ashley's short writings teems with food for thought, while the reproduction of MSS., otherwise inaccessible to the ordinary writer, by such learned societies as the Royal Historical and Selden cannot be over-estimated by men in my circumstances. Some day I shall hope to see the results of Professor Maitland's deep enquiry produced in a connected form for the use and pleasure of his countrymen.

Nor must I neglect to render my sincere thanks to my friends Mr. Howard St. George and Mr. Basil Cornish for their careful revision of a work that I still cannot expect to be free from fault or in any way complete.

RUSSELL M. GARNIER.

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# HISTORY OF THE ENGLISH LANDED INTEREST: Its Customs, Laws, and Agriculture.

## CHAPTER I.

### THE ERA BEFORE THE ROMAN OCCUPATION.

Of that portion of British rural life which, for all practical purposes, may be termed pre-historic, our information is provokingly scant. We, the descendants of the ancient Britons, would fain thrust aside the barrier of ignorance which shuts us out from those interesting Druidical days. The Greek and the Roman historians do but whet our appetites by the scanty food for reflection which the sum of all their allusions to ancient Britain affords us. The vaguest of vague allusions in Herodotus, Aristotle, and Polybius, tell us of the existence of those ten tin islands<sup>1</sup> up in the North Seas; and this literature contains the sole reliable links with the past. The traders of Tyre and Sidon, who had carried the Phœnician flag into many an out-of-the-way sea, had no doubt visited these shores in order to barter their wares for our tin, used when amalgamated with copper for their bronze implements.

<sup>1</sup> Arist., *De Mondo* c. iii. (quoted *Mon. Hist. Brit.*), p. 1. Herodot., *Hist.*, lib. iii. § 115. Polyb., *Hist.*, lib. iii. c. 57.

But Strabo merely creates in his English readers a longing for more facts when he describes<sup>1</sup> the people of the littoral as clad in black cloaks, with sticks in their hands, and bearded like goats, who led a pastoral and nomad life, and bartered skins and tin for earthenware and salt. Whence came these black-coated islanders, who in their mining propensities and dress resembled the Spanish Iberians, and in their long beards and pastoral habits the patriarchs of Scripture?—these priest-ridden monotheists, with their tall slim figures<sup>2</sup> and peaceful mien; these half-hearted sailors, who paddled about their fore-shores in fragile skin-made coracles;<sup>3</sup> these importers of brass ornaments<sup>4</sup> and salt, though the metals that composed the former lay hidden beneath their feet, and the latter impregnated the waters around them? Behind these seaside tribes stretched a baffling forest, amid the shadows of which were concealed peoples with whom the casual Phœnician or Carthaginian trader had no dealings, and who, for all they knew to the contrary, might be cannibals like the neighbouring Ierni, or as fierce and untamed as some vague tradition had represented the northern tribes<sup>5</sup> to be. What might not Himilco of Carthage have told us,<sup>6</sup> who is supposed to have penetrated British seas as far back as one thousand years before our era began, if only he had been as ready a writer as he was bold navigator? And what did we not lose in the destruction of those portions of the history written by Diodorus, giving us the views and facts about our forefathers, which this shrewd writer had picked up from the officers and men of Cæsar's expeditionary force?<sup>7</sup> But we must be content with the account which Cæsar himself has afforded, though information from such a source must for some reasons be regarded with suspicion as liable to exaggeration. The pen which wrote

<sup>1</sup> Strabo, A.C. 90, *Geogr.*, lib. iii., ed. Falcon., p. 239.

<sup>2</sup> Id. *Ibid.*, lib. iv. p. 278.

<sup>3</sup> Craig and Macfarlane, *Hist. of Eng.*, bk. 1, ch. iv. p. 102.

<sup>4</sup> Strabo, *Geogr.*, lib. iii. p. 239.

<sup>5</sup> Diodorus Siculus, lib. v. ch. 32.

<sup>6</sup> Festus Avienus, lib. xxxi. 22.

<sup>7</sup> That Britain was known to the earlier Greek and Roman writers, is evident. See note, Craig and Macfarlane, *Hist. of Eng.*, bk. 1, p. 94.

"Veni, vidi, vici," was no doubt fully capable of augmenting the triumphs won by its holder's sword. Yet, on the other hand, when we read his writings on the subject of his enemies' domestic life and ethics, there would be less temptation to romance than when he was dilating upon the terrible scythe-armed chariots, or the combined cavalry and infantry formation through which he and his men hacked their way to victory. Now and then, too, we are able to corroborate, sometimes even to supplement, such information by the remarks of his contemporaries.

When we grumble at the small allowance of agricultural information that has filtered through to our times, we must bear in mind that this was an age especially devoted to war and the chase, than which no greater antagonists to the milder pursuit of husbandry can possibly be imagined. Successful generals were not likely to spend much time in describing on their tablets the habits of bucolic life, the peculiarities of cultivation, the varieties of live-stock, and the methods of their management, noticeable in a subjugated country. The Britain of two thousand years ago was in many respects like the New Zealand known to its earliest European explorers. Those lands near the sea-shore and their inhabitants' minds could both boast of some slight cultivation, but the back-woods were occupied by men whose intelligence was as stunted as that of Stanley's famous dwarfs.

Corn was the prominent product of husbandry; and the evidence of a few dilapidated monuments, as well as a not long obsolete West Highland custom,<sup>1</sup> corroborates Diodorus<sup>2</sup> in his description of the subterranean chambers for housing the corn in ear, and the beating out, drying, bruising, and roasting the daily portion, which Martin in more modern times relates with the graphic accuracy of an eye-witness as so skilfully performed by the Highlander's womankind. Diodorus,<sup>3</sup> too, speaks disparagingly of their wretched thatch-

<sup>1</sup> Martin, *Descr. of Western Isles of Scotl.*, p. 204.

<sup>2</sup> Diodorus Siculus, lib. v. ch. 21, 22.

<sup>3</sup> Id. *Ibid.* Cæsar, *Bell. Gall.*, lib. v. ch. 1-23, and Strabo, *Geogr.*, lib. iv. p. 278.

covered huts of wood, probably not unlike those Teutonic habitations to which Strabo has introduced his readers.

But Cæsar, who actually penetrated the interior, compares their dwellings to those of Gaul, so that with the additional help of Strabo,<sup>1</sup> we can picture the tract of wooded country and the occasional clearing surrounded by a high bank of earth and fallen trees, with its protecting ditch, from which the soil for the bank had been dug ; and, within, the community of people with their flocks and herds. Frail and ephemeral these wretched structures must necessarily have been, required as they were only to keep together for that brief period before their restless inhabitants, like the South African Boer, "trekked" to pastures new, and for another short spell set up a fresh "kraal."

We can then well believe Cæsar when he states that these primitive persons never sowed their lands, but were merely half hunters, half herdsmen, subsisting partly on the spoils of the chase, partly on the products of their live-stock. Nor have we reason to doubt Strabo<sup>2</sup> when he mentions their ignorance of gardening and inability to make cheese ; nor even Xephilenus,<sup>3</sup> when he asserts that they, like the Greeks of the Iliad, never tasted fish ; nor should we long hesitate to credit that crowning improbability of all, when Cæsar<sup>4</sup> relates that their religion forbade them to eat either hare, common fowl, or goose, though they kept these creatures as pets. The Druids<sup>5</sup> were stern disciplinarians, and fully appreciated the powers afforded by such agencies as mystery and superstition. We can picture, amidst the stunted growth of uncared-for beech and pine woods the taller groups of oaks which marked the groves where they performed their mystic ceremonies. How scared must many a truant urchin have felt as he scuttled past their dread vicinity, or some belated hunter, as he spurred his jaded horse in order to get quickly out of the sombre depths of their shade ! Peoples who reverenced the Druidical

<sup>1</sup> Cæsar, *Bell. Gall.*, lib. v. ch. 1-23.

<sup>2</sup> Strabo, *Geogr.*, lib. iv. p. 278.

<sup>4</sup> Cæsar, *Bell. Gall.*, lib. v. ch. 1-23.

<sup>3</sup> Xephilenus, lib. lxxvi. § 12.

<sup>5</sup> Id. *Ibid.*, lib. vi. pp. 18-20.

cult, like the Gauls, Strabo tells us, were not easy about their harvest prospects unless they could collect together a goodly number of its priests, and we may conclude that the crops of Britain were considered equally benefited by their presence.

Though we read of the good qualities of the small wiry British horses, and the advantages for venery and warfare of British dogs,<sup>1</sup> as well as of the abundance and fecundity of British flocks and herds, history is silent on the subject of pigs. We may be certain they ran wild in the woods, but we find no traces of any prototype of that swine-herd, Gurth, whom, even when engaged in his uninteresting occupation, the glamour of Scott's pen has rendered actually picturesque. When Cæsar left these woad-stained barbarians, whose ideal of commerce did not extend beyond the exchange of tin, not exactly perhaps for the glass and tinsel which attracts modern savages, but for something not far remote from those trifles,<sup>2</sup> such as ivory bracelets, brass mirrors, and amber cups, darkness once more settles over their history, and for nearly one hundred years we are left in ignorance of their progress.

One may be permitted to pause here and give rein to fancy and wonder as to the effects on our modern land system and agriculture, supposing some other than the Roman nation had conquered and taken us in hand. When we come to compare the Romans of those days with the peoples of other countries, we find that, however greatly they may be esteemed for their engineering or military genius, they cannot be considered in the first rank as regards their husbandry. It is true that some Minister or Committee of Agriculture had originated a senatorial decree for the translation of the famous twenty-eight books which the Carthaginian Mago had written on the subject, and that Pliny was about to write a work of lasting importance on the same science; but, for all that, Italian husbandry was far behind that of such countries as Japan, China, and Egypt.<sup>3</sup> The use of the drill was common amongst the Chinese; the Japanese were adepts in collecting and preserving manures;

<sup>1</sup> Strabo, *Geogr.*, lib. iv. p. 278.      <sup>2</sup> Id. *Ibid.*

<sup>3</sup> Rees, *Cyclo.*, *sub voc.* Agriculture.

and the Egyptian farming system was not dissimilar to ours of the present day, so that our agricultural progenitors would have undoubtedly fallen into more skilled hands as regards their particular industry had any of these nations possessed the will and the power to invade our shores. When Rome<sup>1</sup> was annually importing 20,000,000 bushels of Egyptian wheat to supply the deficiency of her home growth, and other nations were but just realising the digestive superiority of flour over acorns, the inhabitants of the Delta were paying attention to the rotation of crops, the making of hay, and the artificial hatching of poultry. Their ancient paintings and inscriptions afford reliable evidence of their skill in erecting farm buildings, making fish-ponds, and preserving game. No wonder they deified their chief product, corn, and worshipped the very animals used in its cultivation. But at this period the activity of European husbandmen seemed to ebb and flow like the tides. In the prehistoric age of Greece, Hesiod<sup>2</sup> was writing his *Weeks and Days*, and then Greek agriculture went to sleep almost until the days of Constantine IV., who revived it by collecting into his Geponics all that had been written on the subject.

But of the various nationalities who came in contact with these islands we may assign to the Phoenicians the foremost place. Unfortunately the type of Tyrian, or Sidonian, who rubbed shoulders with our seaside tin miners, was not agricultural, but seafaring, and no more qualified to understand the tillage of soils than a British tar of the present century.

But, agriculture excepted, what nation of those times could have done us better or more permanent service than the Roman, which laid the foundation-stone of that splendid power which now rules so large a share of the world? It was their road engineering<sup>3</sup> which welded together politically as well as geographically the petty little tribes that existed prior to

<sup>1</sup> *Encylo. Brit.*, sub voc. Agriculture.

<sup>2</sup> Rees, *Encylo.*, sub voc. Agriculture.

<sup>3</sup> Camden gives a graphic account of the Roman road-making, for which fens were drained, embankments raised over low valleys, and width allowed for two waggons abreast. *Vide Britannia*, part 1.

their occupation into the principalities which ultimately formed our monarchy. It was their militarism and discipline which first taught us how to rule and be ruled ; and it was on us alone of their conquered tributaries that they seem to have cast the famed purple mantle of their imperialism. An Egyptian occupation might have introduced the apotheosis of Agriculture, and a Greek occupation that of Art, but who, if not Rome, could have endowed us with the majestic and awful gift of Empire ?<sup>1</sup>

The Roman found the Briton a primitive savage, his food partly what he overtook in the chase, partly what he rooted up from an untilled soil ; his home, the forest or cave ; his ideas of art, feathers and dyes. We shall find, as we pursue this history, that he left him with all the incipient evidence of a vigorous nationality, if not powerful government. Nor is it an argument against this that we have exaggerated the primitiveness of his state before the Roman Conquest, because there is historical evidence of a fringe of civilised foreigners<sup>2</sup> dwelling around his backwoods. Even less is it an argument that we have exaggerated the good done him by the long Roman occupation, because he fell an easy prey to the Picts and Scots on the one side and the Saxon pirates on the other as soon as his patrons left him. He may be compared to the Israelite as we read of him in Exodus. The long Egyptian bondage had quenched his natural fires, and for forty years he was unfit for warfare, but the old martial feeling of the race eventually triumphed. It was the misfortune of the Briton that he was allowed no such peaceful interval in which he might realise and recover that spirit of enterprise and independence with which he was by nature so largely gifted.

<sup>1</sup> Virgil, *AEn.* vi. 851 seq.

<sup>2</sup> Cæsar, *Bell. Gall.*, lib. v. ch. 1-23.

## Period of the Roman Occupation.

B.C. 58—A.D. 426.

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### CHAPTER II.

#### THE BIRTH OF THE ENGLISH LAND SYSTEM.

THREE Nationalities, viz., the Briton, the Roman, and the Teuton, helped to determine the character of our great English Landed Interest. As we come to deal with the various classes connected with this soil of England, we shall discover customs peculiar to their tenure, their husbandry, their commerce, their tribunals, and even their games, whose origin is closely intermixed with ethnical characteristics. This, indeed, endows our folk-lore societies and antiquarian publications with motives a great deal more practical than those of mere curiosity about a dead past.

Could we but trace each of these nationalities to some distinctly separate stem, there would be far less difficulty in tracking back to its proper origin each peculiarity of our Constitution. But this is in no single instance possible. Modern theorists have produced a mass of inductive evidence of sufficient weight to attract a large school of disciples, who would derive the three peoples just named from some common Indo-Aryan source. That this idea has its opponents goes without saying, but even they limit their objections, to but a moiety of the British race; though possibly were Mr. Gomme,<sup>1</sup> their champion, to extend his researches, he might produce sufficient evidence to shake the orthodox theories with regard

<sup>1</sup> G. L. Gomme, *Village Community*, ch. iv.

to Roman and Teuton origins, as he has already shaken them with regard to British.

From the earliest times there was a principle common to most nations, namely, that the land of the State,<sup>1</sup> when not reserved for public usage, should be divided in parts amongst its families. Take, for example, one of the oldest Land systems about which we have any evidence, and examine the Israelitish laws. To each head of a family was assigned a certain portion of the land which became his inalienable property, so that at the recurrence of the jubilee year all his debts, sales, alienations and mortgages lapsed, and the land reverted to its original owners.

A communal form of Land Tenure was especially characteristic of tribal nationalities, and certainly the three<sup>2</sup> races about which we are now interested, existed some time or other in a tribal condition. "They held their lands in common," is a phrase appropriate to any one of them, so long as it be applied in each separate case to the proper era of their national existence.

Had Republican Rome conquered this island, we might have jumped at the conclusion that the Anglo-Saxon Folcland was but a continuation of the earlier Roman polity connected with the *Ager Publicus*. Had Mr. Seebohm<sup>3</sup> and Sir Henry Maine been silent, we should have naturally concluded that the open field system of agriculture, with its peculiarities of land tenure and seigniorial jurisdiction, was but a development of the Teutonic Mark. Had we never become intimate with Indian<sup>4</sup> village communities, and studied the incipient growth of their overlords, we should have traced the manorial system to the Anglo-Saxon war chiefs or the Norman feudal dignitaries.

The whole difficulty lies in the fact that nationalities at similar periods of their existence or under similar circumstances adopt

<sup>1</sup> Fustel de Coulanges, *Origin of Property in Land* (Ashley's trans.) p. 89.

<sup>2</sup> Mommsen, *Hist. of Rome*, vol. i. pp. 38, 72, and ch. xiii. Seebohm, *English Village Community*, ch. vi. Stubbs, *Const. Hist.*, p. 53.

<sup>3</sup> Seebohm, *English Village Community*, p. 410.

<sup>4</sup> Maine, *Ancient Law*.

very much the same systems of land tenure and agriculture. Speaking generally, they fit themselves to their environment, often assimilating into their own constitutional system whatever strikes them as familiar and applicable in the customs of the fresh peoples amidst which their nomadic or rapacious instincts have led them to settle.

This is strikingly illustrated in the history of the Hebrews. Nomadic and pastoral by instinct, they were compelled to revolutionise their habits in a land like Egypt, where the business of the flock-master was an "abomination." At the exodus, once again free to follow their own bent, they became nomadic, until their occupation of Palestine, a country fitted rather for agriculture than a pastoral life, a second time entirely altered their land system.

Compare, too, the procedure of a commercial and civilised nationality, such as the English, when colonising large tracts of uncultivated territories in America, Australia, and the Cape. The tendency is to revert to one of those stages through which our nation has already passed. In the earlier portion of the seventeenth century there still survived minute traces of the old communal polity. For this cause the Pilgrim Fathers introduced into New England the old system of common field tenure. Later on, however, the marked individualism of the overlord eclipses all the earlier tribal instincts. The modern backwoodsman isolates himself from his fellows, and makes a hut, and clears ground for his own individual wants. Unconsciously, perhaps, he adapts the policy of the pastoral aboriginal to his own system. Like that primitive nomad, he exhausts the soil with his crops, as the latter once upon a time exhausted its herbage with his herds; then, like him, untrammelled by the laws and customs of a community, he passes forward to fresh sources of pristine fertility and starts afresh.

Nations, then, which, like Imperial Rome, had long lost touch with their primitive tribal polity, would instinctively revert to it when brought into contact with semi-civilised peoples. It is then evident, in the first place, that any information which we can scrape together bearing on Rome's earliest system of land tenure, will be valuable to the subject in hand. We

shall therefore endeavour to summarise as briefly as possible those features of Roman land management which will enable us when we have proceeded further in our subject to point out as they occur parallels in the systems of other nations.

It is immaterial whether the evidence leading us to derive the Italian from a portion<sup>1</sup> of that Indo-Germanic horde which came into Europe somewhere out of the western centre of Asia is or is not conclusive. It is more to the point that the Imperial Roman of the British era was accustomed to trace a descent back to tribal existence. No student of classical history needs reminding of the Gens, or is ignorant of the patria potestas which armed the father of a family with absolute powers, and left his wife equally destitute of rights with his slave or ox.<sup>2</sup> The Gens was the unit of the community, and the original Roman territory comprehended the united lands of the Gentes. The accretions of territory derived from conquered enemies, on the other hand, were divided into equal lots of two jugera each, and apportioned among the citizens.

The whole district was not thus assigned, but portions were reserved for the service of the gods, the royal domains, and the pasturage of the people's cattle. Each Roman burgess had thus about one acre and a half of hereditary arable land, and the common pasturage afforded him facilities for keeping his live-stock. The pasture-ground in pre-historic times was the un-tilled waste of the community. It was in many respects on all fours with the Folcland of the Anglo-Saxon period; and, as we have already said, the most natural conclusion would be that the latter system was the direct continuation of the former. Both wastes were used for the same purposes by the two peoples. Both were equally liable to appropriation by the over-lord, though the Ager Publicus of the Roman was carefully protected by a code of agrarian legislation, for want of which the Folcland of the Anglo-Saxon was left at the mercy of the allodialist.

When we come to examine the origin of our English Commons, we shall endeavour to prove that the same influences

<sup>1</sup> Mommsen, *Hist. of Rome*, vol. i. ch. 1.

<sup>2</sup> Id. *Ibid.*, pp. 72, 73.

were at work in England, which in Rome were checked by statecraft.<sup>1</sup> The famous agrarian laws only applied to the Ager Publicus, and were never intended, as all early historians have erroneously stated, to uphold in perpetuity the equal division of the two jugera amongst the community. The Anarchical opinions prevalent during the times of the great French Revolution threw a glaring light on the subject, and Niebuhr's researches have fully shown that these laws referred solely to the Ager Publicus in contradistinction to private possessions. Nor do they seem to have been extended in practice to that form of the Ager Publicus which was established in later times outside the Italian peninsula.

The <sup>2</sup>*Ager Publicus* of republican Rome consisted principally of a third portion set apart from the lands of conquered nations. No doubt Rome originally possessed, as we know other Italian communities did, an area of waste surrounding her territory over which the citizens had common rights of pasturage. But in historic times this has disappeared, and all that need concern us is the economical methods resorted to over that division of the Ager Publicus wrung from the foes of Rome. Over a part of this the State had resigned ownership, but the rest was thrown open for the settlement of the citizens; and it is this latter portion which should especially engross our attention.

Land in those times was superabundant and capital scarce, so that the State regarded the settler on the public lands as a national benefactor. <sup>3</sup> It therefore allowed men to take up, free of charge, not only all that they could actually cultivate, but as much as they might have expectation of cultivating. In later times, when it was necessary to obtain some return from the public lands, a charge was levied, in the form of tithes or decumæ, on the agricultural portion, paid generally in kind, and scriptura, or an agistment tax for cattle fed on the pasture. The collection of these charges was leased to the publicani (*i.e.* contractors) for definite sums, and the commission which they

<sup>1</sup> *Encyclo. Brit., sub voc. Agrarian Laws.*

<sup>2</sup> Smith's *Dict. of Antiqu.*, ed. 1891, *sub voc. Ager Publicus.* Willems, *Le Droit Publique Romaine.*

<sup>3</sup> Bruns, *Fontes Jur. Rom.*, p. 413, Hyginus § 115.

might charge to recoup themselves was fixed by the censors, who constituted the chief fiscal authority of the State.

Thus, then, land being plentiful, any man belonging to the governing class who liked to undertake the task of reclamation was readily allowed to do so. The Ager Publicus at first was entirely monopolised by the Patricians. It was a stage of society when trade did not exist, and when, therefore, rich and poor were synonymous terms with landed and landless. Gradually the richer "possessores" succeeded in elbowing out their poorer neighbours. Everything tended towards a monopoly of the Ager Publicus by the capitalist. Large areas of waste, caused either by the devastation of conquest or the natural defects of soil, were continually being added to the State. They could not be pastured or rendered fertile except by expensive operations. They therefore fell into the hands of a limited class who could afford to sink capital either in restoring their pristine good qualities or in stocking them with flocks and herds. None but the moneyed Roman could afford to meet the State charges of one-fifth and one-tenth respectively on the lands they had rendered fit for corn and fruit; and the huge flocks and herds of a wealthy patrician would have bared the unstinted herbage of the waste for the poor man's cow. Up to a certain point this process of reclaiming and thus rendering profitable the waste lands of the State had been beneficial to the bulk of the nation. Then the poise between supply and demand was disturbed from an opposite direction.

The struggles between the Patricians and Plebeians, which occupy the earlier pages of Roman history, had centred round the rights to enjoy the Ager Publicus.<sup>1</sup> When the slave-cultivated properties of the large landowners threatened to swallow up the territory available for cultivation, when the yeoman farmers of the days of Cincinnatus had wellnigh disappeared, when the Roman citizen army had steadily diminished from 328,000 to 319,000 in less than thirty years, and its ranks had been refilled with slaves, who were not liable to be called from their work to serve their country, the position of the possessores

<sup>1</sup> Mommsen, *Hist. of Rome*. vol. iii. ch. ii. and iii. Plutarch, *Lives of Gracchi*.

was seriously attacked. It was against them that the Agrarian legislation was aimed, and they were peculiarly vulnerable, since their tenure did not include the "dominium" of the land. They had become occupiers of the district when even its best soil was of no value as compared with the animals that stocked it or the implements that helped to till it. They had spent their capital in reclaiming useless wildernesses. Now that they were gardens the State began to search back for its title.

Their position in many respects resembles that of the Scotch crofters; but as the Roman law allowed no right of prescription against the State, they were, as tenants at will, worse off than the latter. No matter how long their tenure had lasted, or how much capital they had sunk in improving the holding, they were liable to a moment's notice of dismissal. They had no doubt abused their powers.<sup>1</sup> The manipulation of the public revenues was in their hands, and fraudulent returns in tax schedules were quite as easily effected by them as surreptitious alterations in their boundary marks. Deficiencies had occurred in the public purse, fresh taxation became necessary, and this fell heavily on the poorer citizens. Thus came about those unfortunate class contests between rich and poor, of which every schoolboy knows the story. The system of the "occupatio" was altered to suit the popular outcry. One concession led to another, for the people would not rest content at half measures. They were well aware of their rights, and frequently turned out the obnoxious squatters, till Tiberius Gracchus finally abolished this form of the capitalist landlord altogether. A measure was passed by him which wrested the bulk of their lands from the unfortunate possessores and distributed them in thirty jugera lots amongst the Italian proletariat as inalienable freeholds. But even thus early the claim for unexhausted improvements obtained State support, and the capital sunk in the old "occupatio" was not altogether lost.

Before, however, the fall of the Republic this form of the

<sup>1</sup> *Encyclo. Brit., sub. voc. Agrarian Laws.*

public land had ceased to exist. Private holdings had increased in size and quality, the farming class had declined, and slave labour had spread.

Imperial Rome, however, carried forward the idea of the public field under the same name, but with a different policy. Land was continually being added to the *Ager Publicus* by conquest; only, instead of being subject to the *Leges Agrariæ*, it was, in the greater part of the Empire, administered by the procurators under imperial instructions.

Military frontiers had to be formed, whereby men received grants of land on threatened and exposed boundaries which they were called upon to defend in times of danger.

But in the<sup>1</sup> majority of cases (Britain among others) the soil of the provincial communities was “*ager publicus extra commercium*,” that is to say, it was never allowed to pass out of the hands of the State, and was always chargeable with a land tax, even when held by the Roman citizens. This State charge took the shape of a tribute payable by the inhabitants of the conquered countries. It may be divided into two heads: the “*tributum soli*,” a tax on real property (of which the *scriptura*, *decumæ*, etc., would be classed by the Roman as *vectigales*), and the “*tributum capitinis*,” which was not so much a poll tax as a charge on the earnings of the individuals composing the industrial community. In the wilder districts of the Roman provinces the tribute was obtained from personal property. It was, no doubt, levied in the half-civilised districts of Britain, as we know it to have been levied in half-civilised Spain. Thus, probably, each tribe would be made responsible for a certain amount, which was payable in such commodities as ox-hides and the like. As the principal portion of Britain was waste, and as the majority of its industrial classes were cattle farmers, it is more than probable that wherever the British soil came directly under the Roman fiscal officer's jurisdiction it did so as pasturage under the *scriptura* system. But it would be an error to imagine that all parts of Britain were treated alike, or that any one part was taxed on exactly

<sup>1</sup> Willems, *Droit Publ. Rom.*

the same principles throughout the long domination of the Romans.

It is probable that in Britain, as in other half-civilised communities, there was no very elaborate fiscal organisation. The country indeed did not become a Roman province until A.D. 61; and it was the attempt to enforce the taxation consequent on this operation that precipitated a rebellion that had been long brewing.

The tribute, in whatever form it existed, would be roughly assessed according to the expenses of administration, under the same principles as the Frumentum or corn for the army of occupation was determined by the needs of the troops.<sup>1</sup> An attempt was probably made to collect such taxes direct from the individual native; but it seems to have failed, and the task would then be relegated to the hands of local chiefs. Whatever taxation was found most suitable to the locality, such as the portoria and indirect charges for the commercially inclined Belgæ, and the scriptura for the pastoral communities of the interior, would have been assessed according to the census of the imperial representative; but some form of tax on personal property would have been roughly estimated at an approximate total for the fierce hill tribes of the West.

All such dues would then be levied by the procurator fisci and his clerks, the servi and liberti, but collected by the native magistrates. However, as we have already said, the bulk of the British soil was waste taxable by the scriptura system; and wherever that system prevailed there would be a resuscitation of the old Ager Publicus much as it existed in the early days when Rome was but a hill fort on the Tiber. Moreover, when the imperial domination of Britain had ceased, and the last of the Civil Service officers of the Empire had turned his back on these shores, the Ager Publicus, without even its agistment charges, was for practical purposes absolutely identical with the people's waste of the tribal Romans, as well as with the Folcland of the Anglo-Saxons.

It is so important for our purpose to establish a point like this, which, be it remembered, advances the idea of a Folcland

<sup>1</sup> Tacitus, *Agricola*, 19.

in Britain long before the immigration of the Anglo-Saxons, that it is necessary to examine briefly any evidence which would connect what we know to have been the general Roman policy over conquered and barbarous nations with that in this particular case. Happily for our purpose most forms of Roman taxation aroused native opposition, and such serious occurrences did not escape mention by the Roman historians.

The great revolt of Boadicea<sup>1</sup> seems to have been brought about principally owing to the nefarious exactions of the Roman officials. Prasutagus, king of the Iceni, had died, bequeathing to the emperor his kingdom and daughters. This, however, proved no safeguard to either. The late king's subjects were plundered by the military officials on the pretext of purveyance for the army; his home was ruined through the instrumentality of the civil officials by an abusive manipulation of the imperial fiscal system; and lastly, his kingdom was reduced to the form of a Roman province. But the stirring words of their maddened queen are significant of far longer outstanding discontent. It was not only the frumentum for the troops, but the forced labour on the roads, the exactions and violence of military and fiscal officers which aroused to arms the tribes under her command.

The British of the interior were for a long period too ignorant of agriculture to avail themselves to any large extent of the decumal system of land tenure. They continued to carry on the pastoral semi-nomadic life they had hitherto led, acknowledging the Roman Emperor's sovereignty over their Folcland by the payment of scriptura. Half-ruined already by their prolonged resistance, they were forced to borrow money at usury from their Roman masters. In this way Seneca alone is said to have lent £322,000, and this was another grievance which swelled the ranks of the rebels under Boadicea.

But evidence afforded by ancient British coins also points to the peculiar forms of taxation adopted one time or another by the Romans. Camden alludes to the fact that the Britons used brass money, rings, or plates of iron, and proceeds to describe in numerical order the coins of gold, silver, and "brasse of sundrie

<sup>1</sup> Tacitus, *Hist.*, xiv. 31; *Agric.*, 16.

fashions, all for the most part of the one side hollow." There is, for example, the coin of Cunobelius,<sup>1</sup> with a horse, the word Camo, and a "corne ear." There was another impressed with a swine, another with a "bull boaking with his hornes," another with a "horse ill favouredly portraied," some with trees and some with people's heads. He conjectures that these various coins represented either the agistment or tribute dues; but he shall be heard in his own language. "Considering that Cæsar had appointed what customs or imports the Britons should pay yearly, and whereas under Augustus they endured those payments for portage or toll, as well in carrying forth as bringing in commodities, by little and little other tributes also were imposed upon them, to wit for corne grounds, plant plots, groves or parks, pasturage of greater and smaller beastes, as being subdued now to obey as subjects, and not to serve as slaves, I have been of opinion that these pieces of money were stamped at first for that use, namely, for greater beasts with an horse; for smaller, with a swine; for woods, with a tree; for corne fields, with an eare of corne, as in that piece of the Verolamians which carried the inscription Vero. As for those with the head of a man or woman, they may seem stamped for the tribute Capitatio, which was personal, and imposed upon the poll or person of every one, of women from the twelfth, of men from the fourteenth, yeere of their age, which imposition Bunduica, or Bodicia, a queen of the Britans, complaineth of in these words: 'Yee doe both grase and also plough for the Roman. Yea, yee pay an yearlie tribute in respect of your verie bodies.'"

Camden reminds us that Dio has described the Britons as very much less hampered by the Roman yoke than the Jews of the same period.<sup>2</sup> Both nations were tributaries of Rome from the time of Julius Cæsar to that of Claudius. The Britons, however, made their own laws, elected their own rulers, and very likely stamped their pol silver with images and superscriptions of their own kings, whereas the *κερσος* of Judæa invariably bore Cæsar's image and superscription.

<sup>1</sup> Camden *Britannia* Conjectures as touching the British Coines.

<sup>2</sup> Compare also Mommsen, *Roman Provinces* (chap. on Judæa).

Ere we dismiss the subject of coins we must mention one Roman coin of interest stamped with the inscription of Claudius Cæsar, and on the reverse a husbandman with a cow and bull is imprinted. "The Romans" (saith Servius), "when they were about to found and build cities, being girt and clad after the Sabine fashion, . . . yoked on the right hand a bull, and within forth a cow, and held the crooked plough taile bending inward, so as all the clods of the earth might fall inward; and that having made a furrow, they did set out the places for walls, holding up the plough for the ground where the gates should be."

This coin, so graphically described by Camden, not only represents the founding of the *Colonia Camolodunum*, but is probably the earliest pictorial evidence of the use of the plough in Britain that has descended to our days.

But to return to the main subject of this chapter. How far may we use the parallels between Roman and Anglo-Saxon land tenure, so as to weld connecting links in the chain of our History?

There are writers like Coote<sup>1</sup> who would have us see the agency of Rome in almost every characteristic of our English constitution. On the other hand there are writers like Kemble, who would Teutonise our Institutions so effectually as to exclude all influences anterior to the Anglo-Saxon invasion. It is between such a Scylla and Charybdis that we must now attempt to steer our undertaking.

We shall have to be careful lest we catch too carelessly at any chance similarity between the Roman and later English landed economies. We might for instance point to the already existing Roman practice of devoting a portion of the *Ager Publicus* to the service of the gods as the germ of the later tithe system of the Western Church; whereas the dedication of a portion of Man's worldly goods to the Deity was as old as Abraham and as familiar to every Christian as the Bible. We might again draw erroneous conclusions from the similarity of the common-field system of agriculture practised by the primitive inhabitants of Italy with that practised by the Anglo-Saxons

<sup>1</sup> Coote, *Romans in Britain*.

in England, unless we waited to see if a like system were not common to other peoples of the human race.

On the other hand, it would be unreasonable to ignore the influences of Roman land tenure altogether. In spite of Bishop Stubbs, we believe that the <sup>1</sup> Roman legal code has formed the model for many of the laws in our English statute book, that the Roman vocabulary has been the recruiting ground of our Anglo-Saxon language; and that the Roman engineering genius has created lasting examples for our road-makers and bridge-builders. Why then should not Roman customs have entered largely into the composition of that base on which has been reared our present system of English land tenure?

We who live in these peaceful and enlightened days can scarcely realise how exceptional it was for a nation at the beginning of the Christian era to enjoy the blessings of security to person and property, to travel on roads still the envy of our modern highway surveyors, to live in comfortable and substantial dwellings, and to cultivate arts and sciences which the Greeks and Romans alone of European nationalities were refined enough to appreciate. Yet all this was bestowed on the British by the Roman occupation.

Like the Greeks before them and the English after them, the Romans possessed the gift of ruling conquered nationalities. The secret of their success was no doubt the elasticity of their system. Here in Britain they had Celts, Belgæ, South Germans, and Romans to control; and, as we have already said, we must not expect to find one uniform method adopted; indeed, we could perhaps hardly exaggerate the modifications in their methods of government occasioned by altered circumstances or times. Moreover the Roman occupation lasted as long as from the Norman conquest to the beginning of the Tudor dynasty. Could those four centuries have had as little effect

<sup>1</sup> Let us cite two instances amongst many. The Norman lawyer distorted every grade of the villeinage into one common distinction, that of the Roman slave; and secondly, he applied the Roman rule to the subject of bastardy, thereby falling on the horns of a dilemma by creating a policy contrary to Church doctrine.

on British land tenure as the British occupation for only a quarter of that length of time has had on Indian land tenure? The Britons during the later period of the occupation were not so much the conquered subjects as the friendly allies of the Roman. They regarded the severance of that relationship with as much dislike as the northern Irish would now regard that with England. For a long time after it was brought about they turned instinctively to Rome in every difficulty and danger. They had, in fact, been so accustomed to lean on Rome, that they found it impossible to stand without her. Is it then to be supposed that they were so prejudiced against the Roman's system of land tenure, or so inappreciative of its good points, that they never voluntarily assimilated what was beneficial into their own systems?

On the other hand, in estimating their influence, we must not shut our eyes to the growing tendency in the Romans of the Imperial Civil Service to oppress provincial nationalities where they could do so with impunity. The emperor's legates were not all endowed with the wisdom and moderation of Agricola. The <sup>1</sup> underlings of the fiscal department were overbearing and grasping in the extreme, and Mr. Seebohm has utilised this trait in attributing to the Procurator Fisci the first assumption of overlordship in Britain. That the manorial system in some form came into existence during this period, is our firm belief. But it is difficult to imagine that the officials of the Fiscus would have coveted the overlordship of a small group of natives. They more likely anticipated a successful career in the Imperial Civil Service, possibly ending in the control of their own department.

It is, on the contrary, natural to conclude that the local headman would have assumed manorial rights analogous to those of the <sup>2</sup> Bengalese Zamindar, who was forced by British prejudice into the position of a personal landlord, and thus made responsible for the regular payment of the land tax.

The social status of the overlord must, however, be clearly

<sup>1</sup> Seebohm, *English Village Community*, ch. 8.

<sup>2</sup> Maine, *Ancient Law*.

defined before we can properly examine the question of his origin in this island. He was probably some individual who managed to combine in his own person the offices of judge, fiscal officer, and landed proprietor. The officials of the Fiscus, we are told by Tacitus,<sup>1</sup> though unsuccessful with Tiberius, ultimately obtained from Claudius a recognition of their claims to judicial power. The third qualification *i.e.*, proprietary rights over land, alone was wanting, and to attain that they had to supply capital as an equivalent for the system of coaration, probably then in use, and to become bound by certain social regulations and duties towards their serfs, to which modern times can afford no parallel.

Whether then this combination of powers, which under Anglo-Saxon rule were known as sac, soc, toll, and team, ever endowed some individual of the British era with the same proprietary rights which afterwards made the king's thane and the Norman baron such alarming personages, is doubtful. There is, however, little likelihood that the overlord of this early period, be he Roman or Briton, survived the Saxon's sword, any more than his villa survived the invader's destructive tendencies. It is enough if we point out that the manorial system was not unknown to the Roman. The Fundus of the later republican and imperial times owned by a landlord and worked by his servi and coloni, was not dissimilar to the provincial manor, and Mr. Gomme<sup>2</sup> has gone so far as to produce evidence of a British resistance to the growing powers of overlordship, which not even in Rome had been allowed free play. But for the present we have cited sufficient instances of close parallels between Roman and Anglo-Saxon systems of land tenure and agriculture, and are leaving to the Feudal period, perhaps, the closest of any, viz. that of the colonus with his military service and emphyteutic tenure. So far it is impossible to form any positive conclusions, for we have yet to compare the Anglo-Saxon systems with those of the Teuton, the Sclav, and other distinctive branches of the human race.

<sup>1</sup> Tacitus, *Annales*, xii. 60.

<sup>2</sup> Fustel de Coulanges, *Property in Land*, p. 9. Gomme, *Village Community*, p. 161.

Before we have done this it would be rash to decide whether those curious similarities described in this chapter are, so to speak, a state of equilibrium to which all territorial policy tended wherever the supply of land exceeded the powers of the cultivators; or whether they are due to the common tribal instincts of the Aryan, from which some theorists have sought to derive the three nationalities of Celt, Roman, and Teuton; or whether there be a chain of links which connects in unbroken continuity the polity of each in the proper chronological order of its appearance on the stage of English History.



## Period of the Roman Occupation.

B.C. 55—A.D. 420.

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### CHAPTER III.

#### THE SYSTEM OF HUSBANDRY.

How then did the ancient British agriculturalists farm in order to pay the land taxes levied by their Roman masters and at the same time eke out a pittance sufficient for their own wants? What was the condition of the land and climate at the commencement of the Roman occupation? To what state of perfection had the agricultural knowledge of the British attained? What, too, could the conquerors teach the subjected on this head? These are interesting and important problems which we shall now set ourselves to elucidate.

We have already seen that a few light soils in the southern-most parts of the Island were devoted to corn husbandry. Possibly, as in the America of to-day, crops were grown in succession on the virgin soil, until sterility drove the husbandman further afield. The Kentish chalk lands and the Hampshire downs would be cleared here and there of self-seeded pine<sup>1</sup> and beech; favoured plots sown with grain; villages formed on sheltered, dry uplands, and the flocks and herds pastured as near to their surrounding ramparts as was feasible. If not before, at any rate shortly after the occupation, herds of tame swine would be kept to feed on the mast and acorns that fell each autumn in the woodlands. But wherever the soil was damp and clayey, or access wanting, the husbandman was frightened away; so that, save where some straight line of

<sup>1</sup> Cæsar, *Bel. Gal.*, lib. v. ch. i.—xxiii.

Roman-constructed road cut through these ill-favoured tracts, the greater portion of the island was abandoned to the wild fowl, the wolf, and the deer, or their equally untamed captors. Dank morass and impenetrable forest growth, over which hung for the greater part of each day an unwholesome mist, occupied a large proportion of this uncared-for country.<sup>1</sup>

Yet ere the Roman domination terminated, we read<sup>2</sup> of the inexhaustible supplies of British corn, which fed the Roman garrisons in Gaul, and of the fleets of ships constructed for its freightage; and we shall not be wrong in attributing this change for the better in the national agriculture to the superior knowledge and energy of that race which owned Virgil and Pliny as their countrymen.

We must however bear in mind, while we examine, as we shall shortly do, the agricultural knowledge of these writers, that their compatriots were, for all practical purposes, groping their way in the dark in adapting the agriculture of their own sunny peninsula to the sunless climate of this island. We have no hesitation in asserting that the latter was in many respects worse than it is nowadays. Apart from any speculation upon the vagaries of the great Gulf Stream which has hitherto so benefited the temperature of these favoured Islands, we have reason to conclude that the excessive forest growth, and the wholly undrained ground, caused so humid an atmosphere and so frigid a soil as to have fully justified the condemnatory observations which the historians of those days frequently jotted down on their tablets and eventually copied into their literary works.

The smoke of great cities and the sulphurous fumes of the manufacturing districts in modern times have no doubt affected the inherent fertility of many a formerly favoured locality; but setting aside the effects of the manufacturer's destructive work, we may conclude that the farmer's assiduous application of numerous modern inventions has materially improved the climate as a whole. The virgin and fruitful soil of early times, if aided by artificial means skilfully applied, will still yield the

<sup>1</sup> Strabo, *Geogr.*, lib. iv. p. 278.

<sup>2</sup> Zosimus, *Hist. Nova*, Ed. Reit., Leipsic 1784, lib. iii. ch. 5.

rich harvests which prompted the eloquent pen of Eumenius when he wrote his famous panegyric to Constantine Augustus.<sup>1</sup>

The Roman, when at length he was able to lay aside the sword, and turn his attention to the plough, discovered in the ancient Briton a savage whose staple diet<sup>2</sup> was flesh and the sour fruits of wild apple, pear, and sloe trees, which he washed down with copious draughts of beer and honey ; a barbarian whose clothes were skins sewn together by strips of raw hide threaded through needles of bone ; whose cups were horn, whose weapons of war and chase were stone-tipped spears and sinew-strung bows, and whose boats were platted willow bark covered with the raw hide, which served equally well to harness his ox to its wagon or form the lash of his whip.

The Southron,<sup>3</sup> who spread his bread with olive oil, despised the Northerner's butter and sneered at his ignorance of cheese-making. He was puzzled at the inclemency of a climate, which often would not permit winter cattle feeding, and of a rainfall which rotted the young corn, though the floods from his own mountain torrents but enriched its growth. Had he found a country parched up like his own, he would have set himself with energy to remedy this defect of nature by means of some irrigation scheme in vogue at home. But the saturated air and soil of this northern climate were a novel difficulty

<sup>1</sup> In forming an opinion on this subject, the student must compare the antagonistic opinions found in ancient writings. Authors accustomed to the climate of Germany would call ours more temperate than that of the continent, an advantage we owe to our oceanic surroundings. Their opinions may be divided into three classes : 1. Comparison with Germany, *vide Cæsar, Bell. Gall.*, lib. v. ch. i.-xxiii.; *Tacitus, Agricola*, ch. 12. Class 2, Condemnatory, *Diod. Sic., Bibl. Hist.*; *Ed. Dindorf, Leipsic*, lib. v., ch. xxi.-xxii.; *Strabo, Geogr.*, ed. Falc : *Oxon.*, 1807, lib. ii. p. 153. Class 3, Laudatory, *Eumenius, panegyric to Const. Aug.*

<sup>2</sup> *Joann. Xiph., Epit.*; *Dion. Cass.*, lib. lxii., pp. 1-4: and *Strab., Geogr.*, lib. iv., tom. 1, p. 278.

<sup>3</sup> It is wrong to conclude that the Roman was ignorant of butter-making, which made itself whenever milk was carried in skins on waggon or horseback for even a short distance. Because Pliny's description of its manufacture is confused and unpractical, it does not prove that the Romans were ignorant of its use, but only that they disliked it as a flavouring. See *Hehn's Wanderings of Plants and Animals*, article on "Beer."

which called on his inventive rather than on his industrial faculties. In fact, he of the "wine and oil" district was as much an exotic as his own olive tree in this cold "beer and butter" region of northern Europe.

It must be remembered too, that the British of the interior had been brought up to gain a principal portion of their food in the chase, and were consequently ill disposed to learn a science which would not only lessen the area of their hunting-grounds, but at the same time involve such arduous and unexciting work as clearing woods, planting crops, and pasturing cattle in places where the ravages of wild beasts would be sure to work constant havoc. When to this drawback is added that of climate, we may take for granted that the Romans had an uphill task before them whilst introducing their superior knowledge of husbandry, which only time and patience could successfully effect.

We would gladly, if we could, extract from history some details of those experiments, which were certainly tried by the leading agriculturalists, who came over from Rome to "prospect" the conquered island. We may reasonably conclude that their vines and fig-trees accompanied them hither; just as, Strabo tells us, these plants entered Gaul soon after its conquest. Pliny<sup>1</sup> in the 19th book of his Natural History, informs us how the damp and virgin lands of the barbarians suited the growth of flax, and we cannot be accused of being too fanciful in conjecturing that the introduction of linseed and some rude form of linen manufacture dates from this period. We may also take for granted that the cultivation of the olive was attempted and abandoned. But we should like to know if the Romans brought us over such trees as the Spanish chestnut and the cherry, the former of which was well known throughout the Italy of this period, and the latter of which Pliny himself describes as common in these islands at the time of his writing. Who introduced to us such wonderful pets as the cat, an object of veneration among the Egyptians; the pigeon, familiar enough to the Roman of Pliny's days; or the rabbit, whose excessive fecundity had well-nigh ruined the islanders of the

<sup>1</sup> Cf. Hehn's *Wanderings of Plants and Animals*, p. 142.

Gymnesiae, though the Iberians encouraged its growth on account of the delicate flavour of its flesh?<sup>1</sup>

It cannot be doubted that the Roman would first turn his attention to opening up the country by means of roads; accordingly we find frequent historical allusions to this kind of work. Severus,<sup>2</sup> for example, in order to subjugate Caledonia, underwent indescribable labour in cutting down woods, levelling hills, making marshes passable, and constructing bridges over rivers. Herodian<sup>3</sup> refers particularly to the marshes of the country, with the vapours of which the atmosphere seemed always dense. Many parts also were constantly flooded by the tides, whereby the work of road-making was grievously obstructed. It is evident that there were some native roads, from the facility with which the Romans traversed the southern parts of Britain in the early days of warfare, and in the allusion by Tacitus<sup>4</sup> to the fact that Agricola, when undertaking the invasion of the country beyond the Forth, avoided all such, which he felt sure would be infested by the enemy's forces, and so sailed northwards with his troops. The Roman roads were in great part the work of the soldiery, supplemented by enforced native labour of so severe a nature as to have stirred the indignation of the captive Galgacus, whom Tacitus<sup>5</sup> describes as complaining of the stripes and indignities incurred whilst clearing woods and draining swamps.

These works accomplished, it was the policy of the conquerors, so Tacitus tells us, to wean their late enemies from the crafts of war to the arts of peace; and we may infer that they were soon engrossed in planting orchards,<sup>6</sup> laying out ornamental gardens, and assisting the British husbandmen to develop their systems of agriculture, undertakings which must have called into frequent use such books as the Georgics of Virgil and the Natural History of Pliny. Here then is a fresh starting-point in our history, inaugurating the first books on agriculture which influenced British husbandry. It is curious

<sup>1</sup> Hehn, *Wanderings of Plants and Animals*, p. 343.

<sup>2</sup> Herodian, *Hist.*, lib. iii. ch. 46–51.

<sup>3</sup> Id. *Ibid.*

<sup>4</sup> Tacitus, *Agricola*, ch. 25.

<sup>5</sup> Id. *Ibid.*, ch. 29.

<sup>6</sup> Id. *Ibid.*, ch. 12.

to note about those early historians of this science the veins of religion and superstition which crop up throughout their writings. Whether we take up the volumes of Roman or Englishman, Virgil or Fitzherbert, Pliny or Googe, the result is the same. There is a devotion which associates religion with agriculture, and a superstition which intermingles mystery with its precepts. Such associations excite respectively our admiration and our laughter. When Virgil, for example, pays a devout tribute to Bacchus, to Ceres, to Neptune, or to Pan before he sets about his task of teaching ; when Fitzherbert ends up with an essay on the joys of heaven and the duties of prayer, or when Googe prefaces his book with "a sweete contemplation of God and his woorkes," we bow the head in approval. But when Pliny talks rubbish about serpents' teeth, animals with two hearts,<sup>1</sup> and the poison of yew-trees neutralised by means of brass nails ; or when the early English agricultural authors write about their mystery as though they understand by the term not simply a craft, but that occult process which it suggests to modern ears, we are more inclined to ridicule.

Unhappily the Puritan times, when Bible texts became political watchwords, put an end to the former practice, and happily the spread of chemical science effectually killed the latter.

But let us examine the *Georgics*, and see what the old Briton farmers could have gleaned from Roman writings in the days when it became fashionable to wear the toga and study continental manners and customs in the subjected country.

Here in the first book we find the fullest instructions on the subject of wheat-culture. The bare fallow, the rotation of crops,<sup>2</sup> the methods for obtaining a fine tilth,<sup>3</sup> the pickling of the grain,<sup>4</sup> the drainage of land, the pasturing of sheep on "winter proud braird,"<sup>5</sup> the cleaning of the young crop from noxious weeds,<sup>6</sup> and the bird-scaring are all advocated with

<sup>1</sup> Plinius, *Hist. Nat.*, lib. xi.

<sup>4</sup> Id. *Ibid.*, 193.

<sup>2</sup> Virgil, *Georg.*, lib. i. l. 71.

<sup>5</sup> Id. *Ibid.*, iii.

<sup>3</sup> Id. *Ibid.*, 94.

<sup>6</sup> Id. *Ibid.*, 156.

the skill and accuracy of a Cirencester College professor. Then comes a graphic description of the implements in use. There is the elm plough-tail<sup>1</sup> with its iron coulter, the beam eight feet long, the two earth-boards, the share-beam with double back, the yoke of lime-wood, and the beechen plough-staff to turn from behind the bottom of the carriage. There are the minor implements, and particulars of materials with which the threshing floor is constructed. Then the writer takes in order the cultivation of barley, flax, beans, vetches, and lentils, and ends up the first of these poetical essays with a description of winter life, in which we seem to picture the ploughman during inclement weather sharpening the blunted share, the spare hands harvesting the apples, the shepherd marking his sheep, the housewife busy at her bread-oven, and her maids carding wool. As we turn over the leaves of his second book we cull many a hint on soils, vine and olive culture, and varieties of useful woods, until another glowing picture of Italian home life with its children hanging around their father's neck, the cows waiting to be milked, the young goats at play outside, and the labourers competing for prizes closes the poem. The third Georgic is devoted to the rearing and breeding of live stock; but though we do not recognise the points of a modern prize heifer,<sup>2</sup> as we read of the ugly head, long neck, dewlaps extending to the legs, length of side and large feet of a good cow, there is something that smacks of an Islington horse show in Virgil's description of a mettled steed,<sup>3</sup> with neck raised high, head little and slender, barrel short, back plump, chest swelling with brawny muscle, a double spinal bone running down between his loins, and the solid horn of his hoof. The Roman steed was not however the prototype of a modern shire horse, for we find, as we read on, that the bullocks were trained in pairs to draw the wain or plough the soil. The poet next turns his attention to goats and sheep, and omits not to mention that trusty ally of the flock—the watchful sheep-dog. We need not criticise the

<sup>1</sup> Virgil, *Georg.*

<sup>2</sup> Id., *Georg.*, iii. 51.

<sup>3</sup> Id. *Ibid.*, 79.

writer's exaggerated description of the frosts and rigours experienced by nations in higher latitudes, nor need we examine his fourth book, which is mainly occupied by the culture of bees.

The prose works of his countryman Pliny must, however, detain us for a space. Here we find a higher flight attempted, which carries us into the dangerous area of scientific farming, wherein those favoured with the chemical knowledge of a later era cannot fail to detect inaccuracy and exaggeration.

Passing over his learned essays on the varieties and habits of trees, we shall confine ourselves to Book xvii., which is devoted to subjects of especial interest to the matters in hand. The author commences with a few facts about climates and soils whose vagaries he does not profess to explain, and which have puzzled the brain of many a modern expert. The vicinity of Larissa in Thessaly, he states, was a district suitable to olive culture; but a lake was drained, and the olives ceased to bear. Near the town of Ænos a channel was cut for the river Hebrus, and for the first time within the memory of man the vines were frost-bitten. About Philippi the country was drained, and the climate began to alter. Thrace, he says, is fruitful in corn because it is cold; Africa and Egypt are equally fruitful because they are hot. Chalcia is an island so fertile that a fresh crop can be sown after barley harvest and reaped as early as the crop on the wheat land. In Venafrum the gravel soil is best for olive culture; but in Bætica, a rich soil; Pacumian vines are ripened upon the rock; and Cæcuban vines upon lands irrigated from the Pontine Marshes. Without in any way committing ourselves to an opinion on the causes of these incongruities mentioned by Pliny, we may at least take the effects stated by him as correct, and point out that the *goût de terrain* was not only known to this clever writer, but was as explicable (neither more nor less) as it is to the wine merchants of the present day.

The defects of empirical knowledge when wholly unsupported by science strike us most forcibly in his chapter on Manures.<sup>1</sup> We wonder why M. Varro gave preference to thrushes' manure,

<sup>1</sup> Plinius, *Nat. Hist.*, lib. xvii. ch. 6.

or why Columella ranked the fertilising effects of pigeon higher than poultry dung, or why he despised the guano of aquatic birds and the excrement of swine. What too was the peculiar virtue of *cytisus*, by which it enhanced the value of the dung from all quadrupeds who ate it?

We, whose chemical analysis and synthesis have taught us the constituents<sup>1</sup> of both animal and vegetable life, can only conclude that the same superstition prompted alike Columella's classification and the modern belief that the presence of a he-goat can banish abortion from the cowkeeper's byre.

Let us briefly note in passing the scientific forestry evinced by those three chapters devoted to the propagation and nurture of trees from their birth either in the nursery or by budding and grafting, to their transplantation in the coppice, where the author leaves them as full-grown monarchs of the forest, not without a few silly comments on the baneful or beneficial effects on human life of their various shadows.

Chapters 4–6 refer to a subject which revives our keenest interest in this work, for they consist not only of a masterly dissertation on marls, but of frequent allusions to their presence and use in the Britain of the author's period. The people of Kent were the most civilised of all the British tribes, and their system of agriculture included the marling of land. Later on there are traces of an export trade in this earth, which was thought much of by continental agriculturists. Corroborative of this fact we may instance that an altar was found in the 17th century at Domburgh in Zealand dedicated to the goddess Nehalennia by a British chalk merchant for her preservation of his freight.

In Pliny's careful treatise of the eight varieties<sup>2</sup> of marl, his want of chemical knowledge is forcibly accentuated. Liming and marling of land have been revolutionised by modern science. We know now that the carbonate of calcium must be first

<sup>1</sup> Ammonia, phosphates, and lime are the chief fertilising ingredients of a manure, and those mentioned by Pliny are all rich in these qualities. The dung of swine, though rich in phosphates, does not contain much ammonia in proportion to that of fowls.

<sup>2</sup> Plinius, *Hist. Nat.*, lib. xvii. ch. 4.

separated by the action of heat into its oxide and carbonic acid gas ; next, that the calcined lumps must be distributed in heaps on the field, and that the first rainfall will not only pulverise them into powder minute enough for assimilation by plant life, but will re-form the oxide into carbonate by acting as the medium for its re-absorption of carbonic acid gas from the air. And since no such process was known to Pliny, we can well imagine that when left in lumps and roughly distributed, its fertilising effects would be delayed, and the reaping of the first crop or so would be attended with some difficulty.<sup>1</sup> The mechanical effect that much lime has, especially on light soils, in loosening the surface and sometimes throwing out the young corn roots will perhaps explain the author's meaning when he speaks of an excessive dressing as burning up the land. He mentions eight varieties of this earth, some rough and gritty to the touch, others plastic and greasy, and nearly all of dissimilar colouring. Possibly he is mixing up under one common classification all compounds of clay and lime, and even clay and sand, which we call marls and loams, but which were used in his time under the generic term "marga." Then too the fullers' earth of commerce, potters' clay, and shale may account for some of the varieties he mentions ; but his description of their appearance and effects as fertilisers is too vague and untrustworthy for us to speak with any degree of certainty. Considered simply as a manure, we know from the experiments of the laboratory that the proportion of lime existent in any of Pliny's compounds would regulate its value ; but marl, lime, and even clay are often used as top dressings only for the sake of their mechanical effects on the soil. Since however the crops would be thus indirectly benefited, no one but a modern analytical expert could have separated out the chemical from the mechanical fertilisers in Pliny's eight varieties.

That any of these, when sparsely laid on the land, will fertilise it for eighty, fifty, or thirty years, is an exaggeration which, if even bordering on truth, would upset the compensatory clauses of many an agreement drawn up under the

<sup>1</sup> Plinius, *Hist. Nat.*, lib. xvii. ch. 4.

terms of recent Agricultural Holdings Acts. Every practical farmer nowadays knows that lime and clay sink rapidly, especially on pasture land, because there is no ploughing to lift them to the surface again ; and even the rough lumps of Pliny's days would have disappeared beyond the reach of vegetable roots in eight or nine years at the most. We are glad to notice that Pliny recognised the principle contained in the old saw,—

“Lime and lime and no manure,  
    Make both land and farmer poor”;

and that rich, heavy lands are most benefited by its application.

His hints on the purchase of land are as trite and practical as if written by a modern land agent. “Consider,” he writes,<sup>1</sup> “first of all, its neighbourhood, its access to markets, its water supply. Never buy unhealthy land in a fertile place, or *vice versa*. The health of a land cannot be judged by the appearance of its inhabitants, who are acclimatised to the bad air,” a recommendation which modern farmers might well follow out, by a brief study of the local death rate statistics. “Don’t, if you can help it,” he writes, “succeed a bad tenant, who has exhausted the farm.” Market gardening near towns is cited as the most lucrative kind of farming. Grass lands are ranked next in order; arable farms last—facts as unassailable now as then. The error common to many a modern squire in building too spacious a mansion for the proportions of his small estate is next exposed. The best site is fixed upon with a shrewdness hardly credible in an age so deficient in hydrodynamic skill. But we have already afforded ample proofs of the wide experience possessed by these two agricultural writers, and can safely conclude that the ancient British yeomen had fallen into the hands of competent teachers, who would be both resolute and willing enough to replace the old savage farming customs with so much of their own agricultural system as could be adapted to so deficient a soil and climate.

<sup>1</sup> Plinius, *Hist. Nat.*, lib. xviii. ch. 5.

## The Teutonic Invasion.

A.D. 441.

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### CHAPTER IV.

#### THE MARK SYSTEM.

WHEN next we pick up the threads of history, the Romans, with their imperial and commercial polity, have vanished. Gone are scripturæ, decumæ, and portaria, and along with them the procurator and his liberti. The Roman villa has made way for the lord's rude over-grown hut; bricks and mortar for wattle and daub; Ager Publicus for Folcland, citizens for landfolk, and in a large degree devastated municipia for the rusticity of village life. Roman customs, like their vines and fig culture, survived chiefly in genial soils, and spots sheltered from the storm. Such were the towns which, from their geographical position on the great Roman roads, remained still the centres of commerce.

The causes of this vast social upheaval are to be found partly in the instincts of the Saxon conquerors, partly too, in those of the conquered. Without entering prematurely on the controversy of the Mark system, it may be safely concluded that the old ethnic habits of the ancient British were far more akin to those of the new invaders than of the Romans.<sup>1</sup>

What then was the character of this fresh race of conquerors? How would their system of life affect British rural economy? What were they like in their German homes, these

<sup>1</sup> Tacitus, *Agricola*, ii.

Jutes, Angles, and Saxons, who had so savagely turned to rend the allies that had called in their help? Let us for the present, excluding from our minds the opinions of Seebohm, Stubbs, Coote, and other theorists, proceed to the fountain-head of our information, and examine carefully the earliest evidences on German life.

Ancient history, tradition, inference, all combine to afford us ample evidence of a great sea of nomadic peoples, which in three distinct waves swept over Europe from the eastward, overwhelming the prehistoric aborigines, and tearing up the forests in its onward rush. Each wave separated from the other by different eras, flowed further westwards, as in its wake there followed another and greater billow of humanity. Finally, this vast flood of nationalities settled itself over the face of Europe in the form of three strongly individualised races, similar at first in their nomadic habits, but easily distinguishable in their three several languages. The first of these tides of Oriental peoples, the Cimmerian or Celtic, settled down on the uttermost lands westwards; the second, or Gothic race, found a halting-place in central Europe, and the third, or Slavonic, spent its violence no further eastwards than Russia and parts of Turkey.<sup>1</sup>

Comparing the earliest knowledge that we possess of all these three races with that of the Babylonians and Egyptians we find one great and universal distinction, namely, that whereas the former were all nomadic, the latter were all stationary. Whether civilisation had effected the change or resulted from it does not concern our present purpose. It is in the second-named and nomadic race that we are now interested, and as long as historical data have established its wandering instincts, when first appearing upon European scenes, beyond the searching reach of modern scepticism and theory, we may, at any rate for the present, shirk the question whether those instincts were primeval or acquired. Nor is it worth our while to seek to identify the special tribes who

<sup>1</sup> Mr. Sharon Turner, in the first volume of his *Anglo-Saxons*, has gone deeply into this interesting subject.

conquered Britain with the *Sacae*,<sup>1</sup> that ancient Scythian people so famous in Persian history. Far more interesting is it to learn that they were principally islanders like ourselves, inhabiting Heligoland and other islands, as well as some of the main land about the Elbe's junction with the German ocean.

The earliest direct historical reference to the Saxons is that of Ptolemy the Alexandrian,<sup>2</sup> who lived in the reign of Marcus Aurelius; but all that his scant allusions establish is, that an insignificant tribe, called "Saxons," existed in these parts of Europe as early as A.D. 141. Forty years before Ptolemy, Tacitus had written his German History; and though no direct allusion is made by him to this tribe under their name of Saxons, it has been thought that the Fosi to whom he refers<sup>3</sup> may with reason be identified with this particular unit of the six nations which dwelt around the tidal portion of the river Elbe.<sup>4</sup> Earlier still by 150 years than Tacitus, Cæsar had written his experiences of the Germans; and though making full allowance for the difference in manners between the piratical tribes of the seaboard and those inhabiting the interior, we may reasonably assume that the generalities used by both these historians may be equally applied to Germans, whether occupying lands watered by the Elbe and Weser, or by the Rhine and Danube.

If we refer to Tacitus, we shall find a somewhat flattering account of their manners, because, as M. Guizot<sup>5</sup> has warned us, it is coloured by the mood in which it was written. The book was intended as a satire on Roman morals, which the author compares unfavourably with those of the barbarian Germans. Nevertheless his facts cannot be termed inaccurate, and provided we bear in mind this vein of optimism, we may

<sup>1</sup> Herodotus vii. 64.

<sup>2</sup> *Vide* Sharon Turner, *Anglo-Saxons*, Book II. chap. i. Ptolemy mentions both Angles and Saxons, but not Jutes.

<sup>3</sup> Tacitus, *Germania*, chap. xxxvi.

<sup>4</sup> *Ibid.* Tacitus, however, mentions the Angli; *vide* chap. xl. of his *Germania*.

<sup>5</sup> Guizot, *Cours d'Histoire Moderne*, t. xi. p. 258. Compare also Stubbs, *Constit. Hist.*, chap. ii. p. 17, in which he treats Guizot's theory as exploded.

glean much valuable and trustworthy information from the writings before us.

The land, though it varied considerably, was in many respects like that of Britain, shagged with forests, deformed by marshes, productive of grain, unkindly to fruit trees, abounding in flocks and herds of an inferior type;<sup>1</sup> and since the orchards and live stock of modern Germany exhibit no signs of inferiority, we may conclude that its climate, like that of Britain, was more rigorous and humid before it had been opened up and drained.

The people were brave, chaste, and respectful to women, but indolent, drunken, and glutinous. Their rulers were hereditary chieftains, over whom their peoples had no less power than they over their peoples.<sup>2</sup> Their bravest men became generals, their priests judges, and the powers of life and death were vested in the hands of magistrates.

The open-air assemblies, which in Anglo-Saxon days became the Folkmote, are fully described. About the<sup>3</sup> affairs of little moment the chiefs are allowed to consult and settle; but on those of importance the whole community in open assembly at fixed periods alone can decide. They all attend with weapons, their priest proclaims silence, the chief and the great men address them, and they signify their approval or the reverse by the clash of arms. The council listens to disputes and criminal charges, and fines or punishes the guilty. Chiefs are elected to administer justice in the districts and villages, who each preside over a council composed of one hundred popular representatives.<sup>4</sup> Tacitus<sup>5</sup> draws attention to the complete absence of German cities, and describes the villages, not laid out in rows as in Italy, but every house surrounded by a vacant space, either by way of security against fire, or from ignorance in the economy of building. They knew nothing about bricks and masonry, but coated parts of their buildings with a shiny earth. They resorted to artificial caves in times of cold or danger, and stored their corn underground.

<sup>1</sup> Tacitus, *Germania*, chap. v.

<sup>2</sup> Tacitus, *Germania*, chap. xi.

<sup>3</sup> Caesar, *Bell. Gall.*, v. 27.

<sup>4</sup> *Ibid.*, chap. xii.

<sup>5</sup> *Ibid.*, chap. xvi.

The condition of the Teutonic serf is also worthy of description. He has his own house, family, and land, for which he pays his lord a share of the produce. Excepting in certain tribes where regal government has been established the freedman does not possess a social condition much above the slave. He, indeed, is not liable to death or mutilation like the latter, but he has no political status either in family or tribe.

So far we have collected extracts from both authors as they appeared suitable for our purpose. Now it is necessary to bear in mind that 150 years intervenes between the date of Cæsar's history and that of Tacitus.

Much depends upon the proper interpretation of one paragraph in the twenty-sixth chapter of the latter author's *Germania*, as to the mood in which we approach the conflicting theories with regard to the Mark system. We therefore give this important and difficult passage in full:—

“*Agri pro numero cultorum ab universis in vices [vicis] occupantur, quos mox inter se secundum dignationem partiuntur, facilitatem partiendi camporum spatia præstant. Arva per annos mutant, et superest ager.*”

Were, then, the lands in proportion to the number of cultivators taken possession of “*ab universis vicis*,”<sup>1</sup> by whole communities, or “*ab universis in vices*,” by whole communities in turn? The first reading lays stress on a common land tenure, the other on the annual shifting—a circumstance referred to in the very next sentence, “*Arva per annos mutant*. ”

Now the earlier history of Cæsar agrees with the latter form. “They are not studious of agriculture,” he writes,<sup>2</sup> “the chief part of their diet consisting of milk, cheese, and flesh; nor has any one a determinate portion of land, his own peculiar property, but the magistrates and chiefs allot every year, to tribes and clanships forming communities as much land and in such

<sup>1</sup> The Bamberg Codex has “*ab universis vicis*.” The Leyden Codex has “*in vicam*.” It would appear possible that some early scribe may have omitted the preposition “*in*” after “*ab universis*,” but then *in vices* is not such good Latin as *in vicem*. Hence some commentators have converted it into *vicis*, and others into *in vicem*.—*Vide* Stubbs, *Constit. History*, chap. ii. p. 19, note 3.

<sup>2</sup> Cæsar, *Bell Gall.*, vi. chap. xxii.

situations as they think proper, *and oblige them to remove the succeeding year.*" For this practice they assign several reasons, lest they should be led, by being accustomed to one spot, to exchange the toils of war for the business of agriculture ; lest they should acquire a passion for possessing extensive domains, and the more powerful should be tempted to dispossess the weaker ; lest they should construct buildings with more art than is necessary to protect them from the inclemencies of the weather ; lest the love of money should arise amongst them, the source of factions and discussions ; and in order that other people, beholding their own possessions equal to those of the most powerful, might be retained by the bonds of equity and moderation.

Struck by so unusual a system, the historian took care to make minute inquiries into its causes, thereby as it were, unconsciously anticipating the reluctance of modern scholars to conceive a system of existence which was neither wholly nomadic nor wholly stationary, but at first sight an aimless mixture of the two. And yet this artificially constructed life, with its alternate occupation of the tribal lands, accounts for the slovenly husbandry and indifference to improvements of a permanent nature freely commented on by both historians. It was not, be it understood, the modern backwoodsman's expedient of exhausting the natural fertility of the soil and then leaving it for fresh ground. One Teutonic community, so we understand Cæsar, merely took up the agricultural process on ground vacated by some other. It was in fact an existence considerably less primitive than the pastoral stage of man's development, and less civilised than that to which the Greek or Roman had attained. There was none of the wild passion for wandering which drove ever forwards their Scythian forefathers or which imbues the restless blood of the modern Bedouin. To avoid the indolent habits of an otiose life and to maintain paramount the communal interests over those of the individual, the central power kept the people moving, and this was the germ of a policy which might very soon blossom into all the educated ideas associated with imperial interests. In fact, the Teuton, as described by Cæsar and Tacitus, appears at

a half-way halting house between the nomadic instincts of his Scythian father when he wandered into Europe, and those of his German descendant in the days of the Othos.

But if we come to examine in detail the accounts of both Latin authors we shall soon see that the Teutonic nature had greatly changed during the lapse of those 150 years between the dates of the two histories.

The Teuton of Cæsar enjoyed a communal form of land tenure. The Teuton of Tacitus divided his lands according to social status. The chief of Cæsar was a *primus inter pares*; the chief of Tacitus was closely akin to the later lord of the manor.

Turning back to the passage quoted already, we find a fresh interpretation of "occupantur" such as Columella would have intended to convey when he used the word. The land was "*put to account*" by placing slaves upon it.<sup>1</sup> Here then in chapters xxv. and xxvi. we have three classes—the lord, the freeholder, and the serf, answering in all essential features to those of that allodialist land tenure which we shall afterwards find existing in England.

But this is not the Mark system of Von Maurer, Kemble, and other theorists.<sup>2</sup> Let us therefore briefly describe their views of this famous economy.

When a nomadic tribe took to settling and cultivating land with a view to permanent habitation, its component parts became split up into families and groups of families (the *vici* of Tacitus), each of which erected their own homesteads on unowned wastes. The heads formed themselves into a common council, which selected some favoured spot as meadow ground and apportioned to each unit a share in the crop of the community. After its removal by individual owners the fences or divisions were obliterated until the grass began to grow again the succeeding year, and the cattle of the community fed "horn with horn" on the whole area. The various homesteads grouped together formed the village, and the common

<sup>1</sup> Fustel de Coulanges, *Origin of Property in Land*, Engl. Trans., p. 10.

<sup>2</sup> Cf. G. L. von Maurer, *Einleitung zur Gesch. d. Mark-Hof Dorf- u. Stadtverfassung*, and Kemble, *Anglo-Saxons*.

pasturage ground was surrounded by an undefined boundary, neither divided nor fenced, of woodland and waste. This was technically termed the *Mark*, a word which still survives in Scotland to define the boundaries or marches of the various estates, and which is the derivation of the name by which the province "Mercia" was distinguished.

As soon as these communities acquired further agricultural knowledge they began to till a portion of their territory, and since this required the expenditure of labour and capital it escaped the annual reallotment customary over the hay grounds. The head of each family formed a political unit of the village assembly. Each village or *vicus* had its head man or *princeps*, a *primus inter pares*, and each group of villages formed the district termed *Pagus* by Tacitus, and *Wapentake* or *Hundred* by Anglo-Saxon historians. The old idea that each *Hundred* sent up a representative to some National Assembly has been exploded.

Each individual of the *vicus* within the doors of his habitation was a veritable overlord, possessing the judicial powers over his family and slaves which extended to life and death. Without those doors he sank to the dull level of a common mediocrity. As a unit of the *Mark Society* he was chained down by laws and hedged around by customs which must have been immensely galling to a man of genius or ambition. Each member of the *Mark* had his equal arable lots in each of the three divisions of the plough-land. Every one consigned his live-stock to the care of the common herdsman on the waste or cut his firewood and turf under the supervision of the Communal Officer : no one had more winter corn, or spring corn, or fallow ground than another in the three divisions of the arable *Mark*; everybody sowed his seed and reaped his harvest at the same time, and all drove their flocks and herds on the same day to nibble the herbage of the stubbles and fallows.<sup>1</sup>

Such is the *Mark System* of the theorists, which, if it were to stand alone on the evidences afforded by Cæsar and Tacitus, would have but a flimsy foundation in fact.

<sup>1</sup> Sir R. Morier, *Agrarian Legislation* (Cobden Club Essays).

A history of this kind is not suited for any detailed examination of the *pros* and *cons* concerning it. Nor have we either space or inclination to join in the Franco-German word-warfare, over which so much ink has been spilled with such insignificant results. It is, strangely enough, the same doubtful passage already quoted from the *Germania* of Tacitus, which affords one of the many battle-fields between Von Maurer and Fustel de Coulanges. Over the apparently simple interpretation of the word *agri* the German seeks to prove too much and the Frenchman too little. "Agri" may be too freely translated by the former into Common Field; but unless the latter is prepared to distort its meaning into a number of separate enclosures, cultivated by different individuals but all belonging to some community or chief, the result is a drawn battle. The word, as used by Tacitus in this passage, probably means the undivided arable lands of the Germanic village; and being undivided, they were, at any rate for part of the year, subject to communal rights.

Then again, though Fustel de Coulanges<sup>1</sup> takes in detail and attempts to crush the arguments deduced by Von Maurer from expressions in the earlier Teutonic legislation referring to communal land tenure, he does not touch the ocular evidences surviving up to this day of a communal land economy having some time or other existed in Germany. In fact, the French author assails Von Maurer's evidences of the Mark, rather than the system itself.

There are too many proofs of some primitive tribal economy in modern German agriculture and land tenure for any one to attack the Mark theory as a whole, though successful onslaughts may from time to time be made on its details. Taking the histories of the Latin authors as an outline, we may easily sketch in the lesser features as described by Von Maurer, only reserving to ourselves the right to object whenever the earlier economy of the Mark is anachronously fitted in to some later but incomplete economy of the Manor.

Sir Robert Morier<sup>2</sup> has pointed out that the Bauern Ge-

<sup>1</sup> Fustel de Coulanges, *Orig. of Prop. in Land*, Engl. trans. pp. 8 to 73.

<sup>2</sup> Sir R. Morier, *Syst. of Pruss. Land Tenure* (Cobden Club Essays).

meinde, *i.e.*, Peasants' Community of A.D. 900 is but a miniature of the Landes-Gemeinde, *i.e.*, Land Community of A.D. 100. There are still evidences of the three Fluren of the Feldmarck, answering to the three divisions of the arable ground, the Dorf answering to the vicus, and the Gemeindesanger answering to the old uncultivated Mark, which, as surrounding all the lands of the village community, came to embrace within its meaning their people and customs.

But let us examine more closely the processes whereby the *primus inter pares* of Cæsar gradually turned into the overlord of Tacitus.

Each landowner was by law a soldier, and it was this polity which provoked the constantly arising warfare between Mark and Mark. Such intertribal strife eventually overthrew the strange levelling economy of the Teutonic land system, which not only equalised men's property but their physical and mental qualities.

As one Dorf gradually absorbed by conquest the surrounding Dorfs, she became the Mütter-Dorf of the others. Their several common wastes became the one common waste of the new system, from which arable Marks would be severed whenever fresh Dorfs were founded.<sup>1</sup> After this the appearance of the overlord was not long delayed. The selection of the *primus inter pares* at first from the whole community came to be confined to a few privileged families. The gradual growth of this individual's hereditary claims, and the combination in his person of the war-chief and the judge, eventually introduced both the Herzog and the Hof.

We need not follow the fortunes of the Gemeinde through the vicissitudes caused successively by allodial and feudal tenures; but it may be added that there are far more survivals in Germany to-day of an agricultural economy in which movable property was private and immovable property common, than in any other country of Europe, except perhaps Russia.

Before we come to adapt this system of the Teutonic Mark

<sup>1</sup> Sir R. Morier, *Syst. of Pruss. Land Tenure* (Cobden Club Essays).

to the land tenure of Anglo-Saxon times, there is one other point which we must not overlook.

Tacitus represents the Germans at a more advanced stage of civilisation than Cæsar;<sup>1</sup> but he does more—he represents particular tribes as further advanced than others. Some he describes as having attained to the dignity of separate monarchies. Others, like the *Æstii*, cramped for room, were forced by stern necessity into a more advanced stage of agriculture than those whose wide extent of ground facilitated a less industrious system; and we might no doubt multiply the examples where remarks of this author directly or indirectly point to a higher or lower stage of civilisation in various parts of Germany. Unfortunately we are left in ignorance regarding that particular stage to which the tribes in which we are most interested had attained when they sailed forth to conquer this country.

<sup>1</sup> Tacitus, *Germania*, chap. 26, and chap. 45.

## The Anglo-Saxon Period.

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### CHAPTER V.

#### THE CONNECTION OF THE ROMAN, BRITISH, AND TEUTONIC SYSTEMS WITH ANGLO-SAXON LAND TENURE.

If we could determine that the curious system of land tenure just described was a peculiarity of the Teutonic race, we might perhaps have a firmer foundation for the theory that its introduction into this country was the result of the Anglo-Saxon invasion. Sir Robert Morier<sup>1</sup> has pointed out that agrarian legislation has been very similar in all the States of Teutonic origin. That is certainly true; but if, on the other hand, we can point to a corresponding institution in nationalities of absolutely non-Teutonic origin, we are reduced to the inference either, as Sir Henry Maine<sup>2</sup> contends, that there was some common race-stem like the Aryan whence sprang this peculiar polity, or that wherever land was superabundant and population limited it was the natural tendency of the human race to develop such a system.

Mr. Coote<sup>3</sup> has laid stress on its similarities to the *Ager Vectigalis* of Italian land tenure, with its distinction between *Ager Privatus*, classed by the jurists among *res mancipi*, and answering to the *Folcland* of the Anglo-Saxon, and *Ager Publicus*, classed among *res nec mancipi* and answering to the latter's *Bocland*. Herr Faucher<sup>4</sup> has traced the village com-

<sup>1</sup> *Prussian Land Tenure* (Cobden Club Essays).

<sup>2</sup> Maine, *Village Community*.

<sup>3</sup> Coote, *Romans in Britain*.

<sup>4</sup> In *Systems of Land Tenure* (Cobden Club Essays).

munity both in the purely Slavonic nationality of Little Russia and the mixed Finnish and Slavonic nationality of Great Russia. Sir George Campbell<sup>1</sup> has admitted and Mr. Gomme<sup>2</sup> has insisted that a village communal system with private rights in cattle and public rights in pasturage existed in primitive India. And the latter author has extended his quest with successful results to many other parts of the globe. Even in so old a writer as Thucydides<sup>3</sup> we may perhaps find trace of a *Mark*, with its peculiar characteristics of sanctity having existed between Megara and Athens. Such evidences as these then entirely upset the earlier supposition that the village community, with its various methods of cultivation and pasturage of the *Mark*, is a Teutonic peculiarity or innovation. When we come to the evidences of its presence on English soil, the controversy waxes warm. Men divide into schools over its origin and period of existence. They debate whether it be a primitive or historical institution. They produce proofs of its early adoption by aboriginal husbandmen of this Island. Still further has research carried them until they have discovered a subtle but quite possible distinction between a village and a tribal community.<sup>4</sup>

Closely connected with this subject is the origin of the *Manor*. And here again the theories of modern authors are most conflicting.

Let us, then, who have already prepared ourselves for an impartial attention by a careful examination of early history, now devote a short space to the study of these various opinions, and then form our own conclusions.

And, first, let us turn to Mr. Seebohm, whose profound study of early English Land Tenure must earn from the author of such a history as this the deepest respect.<sup>5</sup>

He and his following seek to trace two pre-historic rural polities with regard to the soil of this island. Both the

<sup>1</sup> In *Systems of Land Tenure* (Cobden Club Essays).

<sup>2</sup> Gomme, *English Village Community*.

<sup>3</sup> Thucydides, *Hist.*, i. 189.

<sup>4</sup> Seebohm, *English Village Community*, chap. vi.

<sup>5</sup> Seebohm's *English Village Community*.

village community of eastern England and the tribal community of western England, he points out, had similar socialistic ideas as regards land. The former belonged to the agricultural period of man's development, the latter rather<sup>1</sup> to the earlier pastoral period. The former was a settled serfdom under a lordship, the latter a community of blood relationship under a *primus inter pares*. The former possessed, approximately, individual equality of land distribution, the latter, household equality of land distribution. When first discovered to the modern theorist, the former was undergoing a progressive stage from general slavery, the latter neither a progressive nor a retrogressive stage. Neither were radically affected by either Roman, English, or Norman invasions, but both were gradually destroyed by the growth of individual enterprise ; yet the germ of each still survives in a recognisable form—such, for example, as the Lammas lands, terrace cultivation, and common rights.

Other theorists, having discovered traces of a similar polity in different parts of Europe and the rest of the globe, ascribe the phenomena to some common ethnic stem. Thus Sir Henry Maine advances the idea that they are derived from the primitive Aryan race, and points to the India of to-day for a parallel case.

Mr. Gomme,<sup>2</sup> following on the same lines as this latter theorist, but recognising the distinction of Mr. Seebohm between a community under a lord and a community under a *primus inter pares*, ascribes the existence of the former to the Aryan people, and that of the latter to its contact with a pre-Aryan, or, as it is now termed, Iberian people. Just as, he reasons,<sup>3</sup> in the India of the present day there are original village communities not Aryan in origin, but formed by a pre-Aryan race which, when conquered by tribal Aryans, became subjected to the latter's system of overlordship ; so in the Britain of pre-historic

<sup>1</sup> The word "rather" is necessary because Seebohm has produced evidence of agricultural practices in early Welsh history. Seebohm *Vill. Commun.*, p. 185.

<sup>2</sup> Gomme, *Vill. Commun.*, *passim*.

<sup>3</sup> Id. *Ibid.*, ch. iv.

times was there the same strange mixture of races with identical results of village communal government, and, moreover, as the English conquest has hardly affected the Indian rural economy, so also the Roman conquest hardly affected that of Britain.<sup>1</sup>

Though united with Sir Henry Maine in his advocacy of the primitive theory, he will not agree with him in attributing both polities of village and tribe to one ethnic source; and moreover, like Seebohm, he seeks to sever the village system from the tribal.<sup>2</sup> The former, he thinks, is a later development of the latter; and the Iberian, lagging behind in the tribal stage, was transformed into the villager by Aryan conquest.

Let us now proceed to sum up the various evidences and form therefrom an opinion of our own. And first, we must draw attention to the wide distribution of communal land tenure brought to light by the researches of some half-dozen or more authors. We must note also that no two systems of land tenure thus evolved agree in anything but their most important features. That of the Roman agrimensor could in no way be confused with that of the Teutonic Mark. Nor could either the English village or tribal system described by Seebohm be reconciled to the allodial tenures in Von Maurer's system of German economy. Nor indeed has the settled serfdom under a lordship of Seebohm's village much in common with the tribal polity of his Welsh discoveries. Again, amongst the nations and tribes carrying out a communal system of land tenure, there are often found marked differences in their processes of husbandry. More especially important is it for us to note that the three-field system in the arable land has never been traced back to the districts from which the Angles, Jutes, and Saxons originated. Hanssen has particularly drawn attention to the absence of the fallow division and consequent two-course rotation. There is much the same general relationship, but a marked distinction of details in the various seignorial economies which we have touched upon.

The tax-collector of Roman Britain, if we may presume that

<sup>1</sup> Gomme, *Vill. Commun.*, p. 60.

<sup>2</sup> Id. *Ibid.*, pp. 60, 292.

he ever became a landlord, is as different from the chieftain of Cæsar as the latter is from the aristocrat of Tacitus. We have found nothing yet but the rude beginnings of a manorial system, and even these have been confined to the more civilised regions into which our examination has penetrated.

We have also been at pains to show that the stages of civilisation varied considerably in the same country at the same period of history.

In the east of Britain the rural economy was far in advance of that in her western and northern highlands.

A comparison between the tribes of the accessible and inaccessible parts of Germany shows the same difference. Even the advanced civilisation of the Imperial Roman had to adapt itself to circumstances, and retrograde towards an earlier stage, when brought in contact with uncivilised nationalities.

If it were possible to gauge the degree of civilisation to which any race had attained by the progress it had made towards the manorial system, we should have one striking and common test, which we could apply to each nationality in whose condition of civilisation we are at this period of history so interested. We should first have to discover that particular stage of its growth when a people is ripe for the change, also what are the usual processes which lead up to and result from that change.

If, then, we could trace back the economical history of all nations to the family, if we could build up process on process the same progressive civilisation which finally culminates in a State constitution, we should, at any rate, have a fair clue to that particular period in national advancement when the tribal, the village, or the Mark economies would be most likely to fit in.

Out of nature's unit, the individual, we should be able to form the family with its *patria potestas* and ties of kinship, making place in process of time for the gens, where the blood relationship is less distinguishable; and eventually spreading out into the tribe with its communal ideas of social and territorial equality. Then would come the period when the community has become of unwieldy proportions. Blood relationship has ceased to be a

connecting link in the constitution. The machinery of government is too general to cover local necessities. The central authority has abstracted the powers of the paterfamilias, and has not been able to replace them with anything so far-reaching. The families group themselves under individual protection and start a system of local government, and that, in other words, is the manor. But the policy of decentralisation is soon carried too far. A common danger reminds the individual that he has national interests. A reaction sets in, out of which is evolved an organisation, mainly dependant for its success on the spirit of patriotism, which culminates in State government.

But there are many exceptions to what has been called the patriarchal theory. The custom of agnation is not universal to the human race.<sup>1</sup> Amongst the Hebrews the mother had as much power as the father, and the latter parent retained a claim to his daughters even after marriage. There is the Mutter Recht in direct opposition to the patria protestas, closely connected with which are cognation and esogamy. Thus, in the case of the American Indians, intermarriage within the totem is strictly interdicted. There is endogamy, with its caste distinctions, amongst the Karems and Keokas of India. There is marriage by capture, still prevalent amongst the aborigines of Africa, and promiscuous intercourse amongst those of Australia. Even in certain of the aboriginal tribes of Britain, about which we are specially interested, Cæsar has told of a polyandric tendency, and all these examples militate against the generality of the process through which we have just sought to trace the evolution of the manorial system.<sup>2</sup>

But they do not really upset the broad lines of man's primitive procedure laid down above, beyond instancing those proverbial exceptions which are said to prove the rule. It is probable that, without outside influences, no nationality would progress beyond the tribal period; so at least the prevalence of this early stage of man's development in many parts of the world at this late age would seem to prove.

<sup>1</sup> McLennan, *Patriarchal Theory*, Deut. xxi. 18-21; Gen. xxxi. 43.

<sup>2</sup> Cæsar, *Bell. Gall.* v. 14.

The family stage, in which the elevated status of the woman is a main factor, also depends on outside influences accidental to the ethnic instinct. A religious polity frequently regulates man's behaviour to the weaker sex. With the Germans, female purity was a sacred tradition principally derived from their peculiarities of religion. With the Romans the female element entered largely into their mythological worship. To Christianity the family was one of the most fundamental of moral institutions, and the influence of this religion was spreading in Britain long before the arrival of the Teutonic element. Occasionally we find political agencies at work, sometimes antagonistic to those of religion. Thus, at so late a period of English history as the Conquest, the feudal system introduced the *jus primæ noctis*, entirely inimical to Teutonic and Christian ideas of family sacredness, but no more an ethnic idiosyncrasy than it was a connecting link between the Norman and Eskimo, amongst whom a similar polity prevails.

Without then extending the patriarchal system to all racial phenomena of an Aryan or Iberian origin, we may with reason apply it to those peoples about which we are more directly concerned. Speaking generally, the history of England before the Conquest is mainly occupied with the decentralisation of national authority; after that event its pages are filled with the details of the prolonged struggle between the central powers and the local seigneurs. Early French history still more vividly illustrates the same course of events.

Bearing in mind the possibility of exceptions, it may be stated that the stages of man's general relationship with the soil have been also very similar in the history of all civilised races.

Though from a very early period there were primitive agriculturalists like Cain, yet the majority of mankind was at first pastoral, like Abel. And while it was to the advantage of the agriculturalist to keep, as long as its lessening fertility would allow, on the same soil, on the other hand it was advantageous to the shepherd to change ground as often as he could.

While the world was thinly populated, the occupation of the

herdmaster was not only the most lucrative but the most pleasant and facile. Then, as man became circumscribed and limited in his choice of pasturage, by the growing claims of his neighbour, the ground needed artificial treatment, in order that it should support the lives of himself and his live stock. For a time it paid him best to exhaust the soil of its fertility, and then pass on to fresh ground. But even then the nomadic habit would be lessened; until a wholly stationary existence was necessitated by the expensive processes which were required in re-fertilising exhausted mould. The heavy cost of the farming stock introduced a system of co-aration; blood-relationship determined the limits of this primitive form of co-operation, and these two circumstances combined would originate the idea of communal land tenure.

Applying these principles to the nations in question, we may conclude that the Roman influence had predisposed the British in a degree, more or less according to their accessibility or the reverse, to the ideas associated with overlordship.

When antiquarians bring to light traces of old hearth religion, tribal houses, communal land tenure, terrace cultivation, and the like, they should be treated as evidences of a more prolonged survival in certain inaccessible parts of England of the tribal stage of man's development.

This island at the period of the Anglo-Saxon invasion was peopled by various nationalities. Some, like the Alemanni, may have been half Teutonised already;<sup>1</sup> others, like the Belgæ, had long been in commercial touch with highly civilised nations: parts of the country were completely Romanised; and there were districts in which the Celtic population was still unadulterated. When, then, the Anglo-Saxons brought over a more or less advanced system of the Teutonic Mark, they would find parts of the country, like Wales, behind even Caesar's brief description of German civilisation; but they would find other parts to which their ideas of land tenure would be utter barbarism.

The Frisians migrated to these shores, as Bishop Stubbs<sup>2</sup>

<sup>1</sup> Seebohm, *Eng. Vill. Commun.*, p. 285.

<sup>2</sup> Stubbs, *Constit. Hist.*, ch. iv., p. 70.

points out, in so wholesale a manner as to have left their old homes without an inhabitant; and though their original leaders may have possessed no creative genius, their peculiar stage of the Mark polity budded forth eventually into the monarchical system of the Heptarchy.

Whatever were the former systems of land tenure in this country, a fresh start must more or less be made when room was required for these new peoples.

The invasion of a race is very different to that of an army. Even that of the latter varies according to the objects it has in view.

When, for example, the Greeks or Carthaginians conquered a nationality, being republican themselves, they established republican colonies with republican ideas of land equalisation. When Asiatic nations with despotic forms of government went forth to war, their conquests were undertaken for one man's pleasure, who had therefore to keep up a standing army distributed as garrisons in those cities of the conquered lands which were strategical centres. When the Romans conquered a country, they did so for glory; and, save for the purposes of frontier defence, they interfered as little as possible with the land question outside their municipia. When modern warlike expeditions leave these shores, to open up some fresh market, the very instincts of commerce induce us to foster, not crush, native manners and customs. When the Hebrews occupied a conquered country, they required it as a home; and as the land was only just large enough to hold them, a war of extermination ensued. Like the last-mentioned people, the Germans, in conquering fresh districts, had habitation in view. They sought neither glory nor commerce, but security and a livelihood. Being a nation of independent tribes with no centralised government, they invaded foreign lands in small and detached parties. To obtain freedom from molestation, they introduced military service purely as a defensive measure; and, to procure a livelihood, they enacted laws establishing fixity of tenure. They were a strange mixture of savagery and tameness. Savage enough when over-population drove them to buccaneering, or molestation threatened to disturb their domestic

economy, but peaceful in their instincts when once they had satiated their land hunger and were left alone. Though too ignorant to be practical traders, they were commercial in their tastes, valuing every transaction of life, even life itself, at so many thrimssas.

Unlike the Roman citizen, the Saxon invader shunned or destroyed the municipia, and absorbed himself into the isolated existence of rural domesticity.<sup>1</sup>

The possession of land was the basis of all his distinctions of rank. The boast of "Civis Romanus sum" had become obsolete and meaningless. If we may use the word citizen in its modern English sense, viz. an inhabitant of the town as opposed to one of the country, there was nothing like it in the new economy. Eorl and ceorl were its Saxon substitutes, and the citizen became the political and social inferior of the squire and yeoman for centuries after, until the repeal of the corn laws announced to the nation that he had resumed that old social status which he had possessed in the Roman municipia.

We cannot expect to find the system pursued by the conquerors under the peculiar circumstances of an invasion which was piecemeal and incoherent, identical with (we might almost say recognisable as) either that pursued at home or that in vogue in the conquered country.

In the Teutonic character there was an independence and individualism which afterwards found a vent under allodial customs as soon as the Frank settled in Transalpine Gaul. Again it was this same disregard of a central authority, this innate love for tribal subdivision, which brought about isolation and want of cohesion in face of a common enemy, and

<sup>1</sup> It must not be supposed that the ancient British were altogether exterminated even in the early times of the Conquest. The Domesday record shows that the servi do not appear at all in the Eastern and Midland shires, but gradually increase towards the west and south-west. Mr. Ashley, in his *Economic History*, ch. i., p. 17, deduces from this, that the Anglo-Saxons, in the later days of the Conquest, began to enslave rather than exterminate their foes; and Camden points out that the ancient British gradually retired to spots inaccessible by climate or position, such as the north or west of the country.

rendered the Briton so easy a prey to the Roman eagles; which operated again when "those swarmes of dusky vermin, to wit, a number of hideous Highland Scots and Picts,"<sup>1</sup> flocked over the whole country and exhausted it of victuals; which gave the victory to these very Saxons whom we are now discussing, when they turned to rend their host King Vortigern, and wrest the land from his cohesionless grasp.

We have already pointed out that we are completely in the dark as to the comparative stage of civilisation to which these particular tribes of the Teutonic family had arrived at the time of their invasion.

Cæsar and Tacitus or Von Manner cannot help us here. The evidences at our disposal are too scant, archaeological data too untrustworthy, and conclusions too vague to admit of much certainty. This, of course, equally applies to the stage or stages of civilisation attained in Britain. Even supposing that our inference of the assumption of seignorial rights by the native tax-collector be correct, what part did he play in the ensuing struggle? He would not, it is true, have been subject to the opprobrium of his fellows or the loss of self-respect which the τελώνης of Jewish history, owing to his mercenary and unpatriotic spirit, invariably incurred. But, on the other hand, landlordism might still be distasteful to the old tribal instincts of many aboriginal Britons. Nor would the common danger weld together into one solid defence the heterogeneous communities which were scattered over the country. The tribes would rest content with watching their mountain passes, the monarchical peoples would keep guard solely over their own frontiers, and the seaboard would be left to whatever substitute the local British had thought fit to appoint for the Comes Litoris Saxonici of the Roman coast defence. But even the few data which we possess for the history of the struggle are liable to mislead; when, for example, the strategy of the invaders would necessitate a marching and countermarching which might easily be confused with nomadic instincts, and on the other hand, the settling down of each band of invaders into a kind of separate and tribal community might arise from

<sup>1</sup> Camden, *Britannia*.

the exigencies of a cramped and isolated position, hemmed in as it was by the hostile peoples of an invaded country. And again, these German tribes coming over in dribs and drabs, each band under its private leader, and slicing out a small area of landed possessions by means of the sword, would never surely submit to such a communal system as that either described by Cæsar or fought over by the theorists. The *primus inter pares* form of communal government might be, and no doubt was, possible in times of peace, when hedged around with the restraining laws of a central authority, such as described by the Roman historian. It cannot, however, be for a moment imagined that a warlike host would be for long restricted by any such artificial institution. That the most trustworthy and gifted members of a community should be permanently on an equality with those who just escaped the consequences of criminality and idiocy, was to destroy all enterprise and offer a premium to mediocrity. That the gallant deeds of prowess and leadership during the recent fighting should be ignored, and that the courageous should be placed on a par with the coward, was a policy impossible to a band of warriors surrounded by vindictive peoples, maddened not crushed by recent defeat. The discipline of war demands that rigid obedience which creates the overlord; which was able to turn the Consul Buonaparte into the Emperor Napoleon, and which would still more turn a Mark of freemen into a manor of serfs. However doubtful we may be of the former's existence at any time in these islands, we need not hesitate to accept that of the latter. The ancient British residing outside the Roman municipia may or may not have been hitherto free from the yoke of overlordship, but now, at any rate, they would be subjected either to that of a Mark or of an individual. Henceforth, then, they were a body of serfs, either obeying the beck and call of a community of freemen, or of a lord of the Tūn—a term which is less anachronous than the word manor, but which was replaced by the latter as soon as the Norman baron turned out the Saxon etheling.

We may give full allowance to the arguments that would annul the civilising effects of the Roman occupation, and we

may reasonably believe that the turbulent years succeeding its termination may have obliterated much of a polity which was contrary to ethnic instincts; but it is impossible to understand how the contact for four centuries with the greatest civilising power of the then world could have produced no lasting fruit save in the municipal centres of the national existence. It is more probable that the civilisation of the ancient British at the time of the Teutonic invasion had far outstripped that of the "sea wolves," as a Roman writer of the age had termed the invaders, who had never come into peaceful contact with any but the rudest and most barbarous specimens of mankind.

It has been pointed out that though the Germans of Cæsar's time were very far from being savages, they made but little progress towards a higher civilisation during the two long intervals—the first, from the time of Cæsar to that of Tacitus; the second, from their description by the latter to their appearance on our shores—and three hundred and fifty years made so little impression on their manners as to have provoked the inference (wrongly, we believe) that they had continued stationary throughout.<sup>1</sup> Yet all this time the ancient British were reaping the benefits of contact with a highly civilised people. It may be inferred that Roman strategy blocked all tendency to combine in the subject tribes of Britain, and to this must be attributed the sole cause of their not becoming a homogeneous and powerful nation. In other respects their refinement and polish must have exceeded anything reached in this country up to the Christian period of the later Saxon times. When, then, the Teutonic overlords with their Mark of freemen settled in their midst, it is surely reasonable to believe that the civilisation of the country made a considerable retrograde movement back towards the tribal stage of man's existence.

<sup>1</sup> Mommsen, *Roman Provinces*, ch. on Britain.

## The Anglo-Saxon Era.

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### CHAPTER VI.

#### SEIGNORIAL POWERS.

THUS far we have confined our attention to an examination of the systems of land tenure practised by the Roman, the Briton, and the Teuton. It is now our object to study the rural economy of the mixed peoples who were occupying the soil of Britain.

Passing over the irresolute resistance of the British, the gradual progress of the conquerors from isolated footings about the seaboard to a final parcelling out of the country into the kingdoms of the Heptarchy, we at length arrive at a period when the crews of each marauding fleet had finally settled down on whatever area of land they chanced to conquer, and were carrying out on a small scale as nearly the same system of home government as the altered circumstances would admit.<sup>1</sup>

Their leader was, at first, the earldorman; afterwards, the cyning, or creature of the community; and, finally, the Bretwalda.

Parts of the divided lands, it is reasonable to suppose, were subdivided amongst the warriors in proportion to their services. Parts became the Folcland, or common ground of the community, and the rest, if any still remained, would be in native hands.

The cyning, with his wise men, made the laws in open-air assembly, technically called the Witangemote. Those warriors

<sup>1</sup> Hume, *Hist. of Engl.*, Append. I.; Stubbs, *Select Charters*, Introd. Chapter.

who had received large grants subdivided them, partly amongst their followers, and partly, in exchange for agricultural services, amongst their bondmen.

The old home polity of a common and equal enjoyment of all the lands could never have existed in the new economy. The inequality of war services had set up a claim which could only have been fairly recognised by an inequality in the distribution of the plunder.

But it had not been purely an invasion of warrior bands but also an immigration of tribes. In every instance the whole Mark disembarked on these shores, with its three social grades of edhiling, friling, and lazzus, its wives and little ones, its cattle and household gods, and lastly, its domestic associations of kindred and land tenure.<sup>1</sup>

Did then the new life start, as Bishop Stubbs maintains, at the point at which the old had been broken off? Were the eorl, ceorl, and lœt of the new society exactly identical with the three distinctive grades of the old? Would the names and functions of the magistrates, the principles of customary law and local organisation, be the same as in Frisia? In other words, did the long journey over a wilderness of waters effect as little change in our Anglo-Saxon progenitors as did the long journey over a wilderness of sand in some nomadic tribes of the Sahara?

To answer these questions in the affirmative would be to condemn them as barbarians too ignorant to appreciate the relics of the advanced Roman culture, too intolerant to imitate what was worth imitating in British ethics, and too self-sufficient to correct the errors of their own polity.

It would be to ignore the similarities between Roman and Teutonic land tenure, to disconnect the *Ager Publicus* from the *Folcland*, the *Ager Vectigalis* from the common field system, and the overlordship of the *villa* from that of the *tūn*. It would sever completely the long line of our English ancestors from the British and Roman peoples, and, as Mr. Coote puts it, post-date all our great institutions and traditions.

<sup>1</sup> Stubbs, *Constit. Hist.*, 4th ed., ch. iv., page 70; Hume, *Hist. of Engl.* Append. I.

Though ready to admit that, under similar circumstances, any human community will regulate the distribution of its landed property on very similar lines, and though the accidents of circumstances are stronger than ethnic instincts, we are not prepared to throw over any one of the curious parallels which we have raked up out of the dead past, in either Roman or British history, until we have further examined the customs and manners of the new invaders.

At the first outset the *vicus* was probably too small to constitute a unit of the *pagus*; but as the population of each petty dynasty increased, we are prepared to recognise the old subdivision of the *populus* into *pagi* and *vici*, as also under their Saxon names, the *reges*, *duces*, and *principes*, which figured in the works of Tacitus. The *rex*, however, seems to have been surrounded with more of those monarchical attributes with which our English kings are endowed, than with what we associate with the Saxon title of *cyning*. And with regard to the *duces* and *principes*, we should be inclined to derive from their combination in the person of one individual the creation of the overlord.

But if there was no equality of rank or property a greater portion of the British soil remained subject to common rights similar to those of the *Mark*. Nor would any alteration in this system occur when the entire community was split up into a number of smaller communities, each owning its individual lord of the *allod*.

There was, however, no authority vested in the central power, such as the king and his *Witangemote* now formed, whereby could be enforced the annual interchange of land which had so successfully checked anything of that tendency to isolation and independence apparently peculiar to the Teutonic nature.

Thus, as soon as these petty and multitudinous settlements had become superseded by the kingdoms of the *Heptarchy*, and even long after the latter had grown into a single Monarchy, this fatal tendency continued. The owners of landed property acted as though they governed separate kingdoms, Each district supported itself by its own efforts and produce.

Any interchange of commodities betwixt village and village<sup>1</sup> was unusual, and, as we shall shortly see by reference to the *Saxon Chronicle*, constantly recurring famines and pestilences were a necessary result. Well may we believe that as agriculturalists the conquerors might with advantage have become the pupils of their slaves. The fields which year by year had borne harvests sufficiently abundant to support the Roman garrisons in Gaul, even in addition to native requirements, now often failed to maintain their own cultivators. The export trade in corn ceased entirely, and even its circulation in the interior of the country had stagnated to a degree little short of actual cessation.

Bad agriculturalist though he was, the Anglo-Saxon's hunger for land was only equalled by his craving for maritime adventure. Its possession, as we have already said, was the basis of all his social distinctions, and this fact is the more significant since it was a time when personal property was immeasurably of more value than real. Do we not detect these same characteristics every time a modern tradesman invests his small fortune in a freehold or in farming stock, and breeds a lad as keen for salt water as ever had been his Bersaker forefather? Lucky too for the tradesman, that that same forefather had never quite succeeded in stamping out the Roman systems of municipal government, or he had not been able to accumulate the capital out of trade which enabled him to purchase a restful and lucrative old age in the country.

The picture of social life which next presents itself is a king presiding over his Witangemote, and the thanes wielding almost identical powers over the vassals and agricultural classes on their lands. The three great ranks in the kingdom, the nobles, the free, and the slaves, each contributing its allotted services to the general welfare of the nation, and each possessing its own peculiar social distinctions, had become further subdivided into six separate grades. The aristocracy were divided into king's thanes and lesser thanes, the former

<sup>1</sup> It must be borne in mind that for the greater part of the Anglo-Saxon era there were trackless wastes separating village and village, probably infested by outlaws and wolves.

comprising the allodialists, whose lands were distributed amongst the latter in exchange for their military services.<sup>1</sup> The farmers, or to use their Saxon appellation, ceorls, were also socially divided into the yeomen, who paid rents in kind, and socmen, who performed prædial services for the lands of the thanes which they cultivated. The division of the remaining class into prædial and household bondmen completes the six distinctive heads under which every soul, except the king and the lower priesthood, in Anglo-Saxon England was comprehended.

By a system of local government the whole country was parcelled out into counties, hundreds, and tithings, and over these were appointed respectively the vice-comites, prepositi, hundredorum, and tithing men, each of whom presided over his own peculiar court of justice.

Thus briefly have we traced the growth of the monarchy out of the scattered and separate territories won in warfare by the original Saxon chieftains.

It is now necessary to study in detail the successive processes whereby the soil of this country came under seignorial jurisdiction.

Bearing in mind what has been said in the former chapter on the natural tendency of most European peoples to pass through the successive stages of family, gens, tribe, and State economies, we propose now to adapt the same principles to the nation under discussion.

When historical data first give us a glimpse of the Anglo-Saxon constitution we find the machinery of government divided between the public courts, such as those of the Witangemote, the Sheriff's Tourm, the Wapentake and the Tithing, and the private courts, such as those of the King's Thane and Halmote. Great difficulties have been met with in separating out the business that would be transacted in the former from that of the latter, since both jurisdictions frequently embraced the same area of land.

<sup>1</sup> Sharon Turner divides the nobles into ethelings, earldormen, eorls, and King's Thanes, vol. iii., ch. vii., *Hist. of Angl.-Sax.* We shall develop this subject later on.

Bishop Stubbs<sup>1</sup> has pointed out certain franchises or liberties identical in extent with the hundreds or Wapentakes, whose proprietors possessed those rights of sac and soc, toll and team, which also belonged to the president of the public court. The same author has suggested<sup>2</sup> that this practice of sac, soc,<sup>3</sup> etc., introduces the first idea of a jurisdiction accompanying the possession of land, and attributes to such cases the original absorption of national business into the private tribunal. Mr. Maitland dealing with the subject of Frank-pledge and the Jury of Presentment<sup>4</sup> in their relationship to the Court Leet, holds similar views. He suggests that the Jury of Presentment originated long after this era in the Assize of Clarendon, and became implicated with the pre-existent view of Frank-pledge in the Hundred Court. He further suggests that by a piece of seigniorial imitation of public judicial rights properly belonging to the Hundred Court, it was introduced into the Private Tribunal, and that the abstraction or usurpation of these powers, together with sac, soc, toll, team, and estate business formed that fortuitous concourse of atoms out of which was evolved the Court Leet. We however propose to entirely reverse the process, by suggesting that the original Saxon over-lord was first a judge, afterwards a landowner, and that therefore the abstraction of his judicial powers by the nation was just the very opposite process to what Bishop Stubbs and Mr. Maitland have imagined as taking place.<sup>5</sup>

At the time of the early Anglo-Saxon occupation of Britain we are at a period too close to the transition stage from com-

<sup>1</sup> *Const. Hist.*, ch. v., ed. iv., sec. 47.

<sup>2</sup> Id. *Ib.* ch. viii., p. 204.

<sup>3</sup> For a definition of sac, soc, etc., *vide Laws of Edward the Confessor*, xxii. Stubbs, *Sel. Charters*, pt. ii., p. 78.

<sup>4</sup> *Select Pleas in Manorial and other Seigniorial Courts* (Selden Society, 1888). See also Appendix M. to Taswell-Langmead, *Const. Hist.*, ed. IV.

<sup>5</sup> Mr. Henry Adams, in speaking of Edward the Confessor's sweeping grants of jurisdiction to the Church, leaves open the question whether they preceded or followed the silent assumption of judicial powers by private hands. *Vide* p. 52, *The Anglo-Saxon Courts of Law*, in *Essays on Anglo-Saxon Law*.

munal rights to those of the overlord for the latter to have lost the magisterial powers which were invested in him under his old office of paterfamilias, and on the other hand not sufficiently forward in the evolutionary stage of landownership to find those plenary powers over the soil to which the later English owners of real property attained. Being far more the owner of the people than of the people's land, he was less trammelled in the management of the former than of the latter. By the time he ceased to be *ex officio* a judge, he had established such prescriptive rights of land ownership, that no champion of the masses ventured to dispute his title. When, as late as the Tudor period, he attempted to alter the *status quo*, he raised a bloody tumult. Even to-day there are parts of the English soil where he is quite content if he can but retain the limited rights which he already possesses.

We have said that the lord was far more owner of his people than of the lands constituting the limits of his seignorial powers; but we must not understand by this expression that all the people of the tun were in the condition of a Roman slave. Some there were who ranked as the lord's goods and chattels, others performed their allotted tasks by certain fixed customs, and a few even thus early were what Vinogradoff has defined as free agents bound by contract. There are some who have imagined that the first-mentioned grade of servile economy represents the primary condition of the whole community under the manorial system; but that is an untenable position when we come to examine closely the records that exist of popular claims on certain portions of the manorial lands, not only advanced by the people, but continually recognised by the seignorial owners throughout the periods of Anglo-Saxon and mediæval land legislation.

It is clear, then, that this peculiar relationship between lord, people, and land called for the private court, just as much as the relationship between nation and constitution called for the public court. As that relationship altered, a reconstruction of the various tribunals was not only necessitated, but took place.

It is hard for a modern reader in these days of cramped land ownership to realise a condition of affairs where a district was

so extensive and the population so sparse as to leave a large area of useless waste even after all the demands of the inhabitants had been satisfied. Such, however, was the case when the invaders first settled on English soil, and so the existence of Folcland demonstrates. When each district came to be parcelled out by the Bretwalda amongst the various claimants, "How little can you do with?" was less the question than, "How much?" The men who had come all this way across the seas were not so much the possessors of a large personality in flocks and herds as leaders of bands of warriors. The over-lord of each district was therefore less the owner of lands than the governor of a province. He was the magistrate of the pagus, and whatever existed of the old Mark system would probably be found in the grouping of his subjects into families, in the administration of the laws, and in the economy observed over the husbandry. Jurisdictional rights, however, would not of themselves be sufficiently lucrative to afford their proprietor a livelihood. He would require something more tangible, such as a lion's share in the soil of his territory, and he was powerful enough to obtain what he wanted. This, we think, is the origin of the demesne land. Must we not expect then, for some time after the Teutonic invasion, to find as we progress in history fewer traces of village communal customs and more of those institutions peculiar to the manorial system? There will be fewer hides in the common pasturage and more in the lord's demesne, fewer appeals to the community's tribunals and more to the lord's. It were folly to expect events to develop otherwise without such artificial and restrictive legislation as was resorted to by the Germans of Cæsar. As well might we seek to confine by law the annual profits of the trader to that sum which represents those of the least enterprising of his class, as to restrict a community to the equal subdivision of its lands. It is hard to believe that any artificial expedient (even the occupation of the Marklands in turns) would have restrained the now semi-civilised Anglo-Saxon from violating village communal laws. For directly a man grows sufficiently educated to appreciate the uses of agriculture, the value of the waste as common pasturage becomes diminished in his

eyes. He decides to reclaim it under the plough ; and the ground, mellowed by his labours and green with sprouting corn, awakes in him the sense of proprietorship.

Thus, in the case of the Anglo-Saxon, from the retention of his share of the common pasture ground beyond the usual period, to its cultivation, thence to its possession and enclosure, and so on to a still further claim on the adjoining waste, are but the usual steps to absolute possession which commend themselves to any masterful and progressive mind. There is surely no reason to imagine that the rest of the community objected to this appropriation of what was everybody's but not anybody's property. Possibly some sort of negative permission was obtained for each act of encroachment by a chief who had a claim on the community's gratitude as a protector at a period when, by the solemn act of "commendation," small landed proprietors were constantly resorting to protectors.

Somehow or other, therefore, the largest landowner became the lord of the community, and the community became *læti*, who possessed much the same common rights as before over at any rate a larger portion of the woodland and grassland, though parts were no longer known under the old term "Folcland," but either *terra regis* or lord's waste.<sup>1</sup> Probably, too, they tilled their allotments in much the same fashion, using in turns the lord's farm implements instead of their own. Only when a cow strayed, or a stream got dammed up, or a road required attention, or somebody's swine got confused with somebody else's, it was to the lord's court they had to go to obtain attention and justice. This we venture to think is the origin of the allodialist, perhaps it also explains the division of the land into counties and hundreds, each with its peculiar court of justice.

Many an historian has puzzled his brains for an explanation why England was unequally subdivided into counties as big as Yorkshire and so small as Rutland ; what, too, was the origin of the Wapentake, the Lathe, and the Rape, the Trithings and Ridings of Yorkshire, and the three shires into

<sup>1</sup> We shall discuss this branch of our subject further in the ensuing chapter.

which the county of Lincoln was divided? Perhaps Bishop Stubbs<sup>1</sup> has collected all the evidence on the subject that can be found. It may, however, be suggested that the counties represent some division of the English lands into principalities of an earlier date than those of the Heptarchy; when there was a polyarchy of little States, each with its *cyning* and separate court of law. According to tradition, the more symmetrical subdivision of the counties into hundreds with their subordinate courts of jurisdiction was the later work of the monarchy.<sup>2</sup>

If, then, we may assume that the old Court Leet of each principality now became the Sheriff's Tourm of the same district under its new name of county, we may thus explain the presence of the Frank-pledge and Jury of Presentment in the Scyremote.

Where however, in the administration of Alfred, it was thought fit to leave these old powers in seigniorial hands, the old name also of Court Leet might linger on, for the purpose of distinguishing between the administration of justice that was public and that which was seigniorial.<sup>3</sup> The origin of these early courts, both private and public, dates from a time when the popular rights were gradually lapsing into the hands of the overlord, and the community no longer monopolised the reins of government. Yet though the *primus inter pares* of the earlier system is hardly recognisable in his new position of absolute lord, many traces of the old polity survive and will continue to survive. Lammas lands, for example, exist, which are still subject to the old rights of the Mark system; and the recent enclosure of commons has not altogether swallowed up that *Ager Publicus*, which possibly existed under a Roman title long before this Anglo-Saxon period.

<sup>1</sup> Stubbs, *Constit. Hist.*, ch. v.

<sup>2</sup> Henry Adams suggests that the State of the seventh century became the shire of the tenth, while the shire of the seventh century became the hundred of the tenth. *Anglo-Saxon Courts of Law*. *Vide Essay on Anglo-Saxon Law*.

<sup>3</sup> We shall see later on, that even on the private manorial estates of the allodialists there were public lands, the administration of which required the public officer.

Amongst these survivals we shall class (Mr. Maitland notwithstanding) both the Court Leet and the Frank-pledge.

It is the fashion for modern theorists to ignore entirely the statements of the 16th and 17th century writers. They, however, had access to works which have long ceased to exist.<sup>1</sup> Many of them were lawyers, accustomed by profession to sift evidence and to act on precedent. When, therefore, such writers inform us that the Court Leet was the oldest in the kingdom, we should pause before we reject the statement. It has always been supposed that it originated in some primitive open-air assembly having jurisdictional powers higher than those of the Wapentake. It was confined to the discussion of public business, and was presided over by the lord. Its name, derived from the Saxon "læo" (*i.e.* "law") favours the assumption that it was an early institution. There is no doubt, however, that it must have been frequently reconstituted to suit the continually changing relationship between the lord and the land. In its earliest form it would seem to have been a miniature of the great national assembly of the Witan-gemote. Just as the *cyning* afterwards presided over the Witan composed of the abbots, bishops, and chief landowners, and possibly also attended by an outside circle of non-voters, so would each chieftain sit under some sheltering tree and hold his Leet Court for the administration of local business within his seigniorial territory. Closely associated with this Court was the Frank-pledge, another survival, no doubt, of a communal economy.

For, where a system of common land tenure and agriculture prevailed, the sins and short-comings of the individual were visited upon the community. If we may take a comparatively trivial example, neglect to weed one plot of land would be felt on adjoining plots, where the breeze-blown seeds would be sure to germinate. One man's dilatoriness in sowing or reaping his corn would delay the whole harvest of the district, and consequently the community's resumption of pasturage

<sup>1</sup> Kitchen, *Court Leet*; Jacobs, *Complete Court Keeper*. Vide the list of authorities quoted by this latter author, most of whose works are extinct.

rights over the stubbles. The efficacy of the communal machinery depended upon that of the individual; where all suffered for one's misdeeds, the only remedy was for all to be responsible for the good behaviour of each.

Out of these circumstances was evolved the Fridborh, confused by the Normans with the "freoh borrh," and consequently afterwards misnamed Frank-pledge.<sup>1</sup>

This system was not peculiar to the Teutonic nationalities, but has been traced, together with a communal form of field husbandry, to the Slavonic peoples of Bohemia,<sup>2</sup> and the Celtic tribes of Wales and Brittany.<sup>3</sup> As soon as the overlord appeared, in like manner as he had assumed his share in the agricultural economy by replacing the community's farming stock with that bought with his capital, so now he assumed his responsibility in the system of Frank-pledge. Henceforth he was the surety for an absconding criminal, and would have to pay the "wre" or fine to the relatives of any one murdered by his retainers. The villeinage remained, as before, collectively liable for an individual's shortcomings. But to the intermediate class on the manor, those below the lord but of more substantial means than the villein, the pledge did not apply, as their worldly goods afforded a sufficient substitute.<sup>4</sup>

It is impossible to say when the recentralisation of jurisdictional powers took place. It was no doubt a gradual process, but there are abundant proofs of its steady progress.

Whatever they were at first, the judicial rights of the individual did not long remain plenary. They belonged to the assembly and not to the magistrate, and the freemen who represented both County and Hundred judged the causes in point of law as well as in point of fact.<sup>5</sup>

<sup>1</sup> Vide Kemble, *Anglo-Saxons*, and *Saxons in England*.

<sup>2</sup> *Codex Legum Slavonicarum*. Analysis by M. R. Daresté, *Journal des Savants*, 1885.

<sup>3</sup> Such seems the system of the "led," i.e. witnesses who might be rejected by the defendant, who were summoned by judicial authority, took the oath, and could be examined if necessary.

<sup>4</sup> Palgrave, *Rise and Fall of Engl. Commonwealth*.

<sup>5</sup> Guizot, *Essai sur l'Hist. de France*, p. 259 note.

A gradual decrease of seigniorial powers and a larger increase in proprietary rights are shown to have taken place in the former instance by the institution of royal courts, like the Scyremote and Hundred, of royal officials, like the King's Reve,<sup>1</sup> of the royal prerogative, like the subject's right of appeal from the decision even of Scyremote,<sup>2</sup> and in the latter by the increased rights of individual ownership to the waste and common field.

Eventually it was only in the Courts of King's Thanes and in the Halmotes of a few franchises that seigniorial rights over life and death survived.

Where cases occur of fresh grants to individuals of soc and sac, as late as the reign of Edward the Confessor, they were probably owing to the creation of new manors by the conversion of Folcland into Bocland, which necessitated a fresh grant of judiciary powers, at first not so much connected with the grantee's peculiar tenure of land as with the grantor's selection of some fitting candidate to perform these solemn duties in a newly populated district. Whenever the selection fell (and when did it not?) upon the owner of large landed estates, he was no doubt allowed, for convenience sake, to absorb the fresh judicial business into the other work of his seigniorial court, so that both would be held in the same room of the lord's house.

The largest portion of these mixed seigniorial and public tribunals was found to be, at the close of the Anglo-Saxon era, in ecclesiastical hands,<sup>3</sup> and it may be inferred from this fact that the clergy had been less liable than the laity to forfeit such right by arbitrary acts of injustice.

It seems, therefore, not at all improbable that the presidency of more than one Court was often invested in the same personage.<sup>4</sup> The president, for example, of the Leet might also be president of his Seigniorial Court. Very likely, as Bishop Stubbs suggests, there were two officers, one the convener, the

<sup>1</sup> Hence the term reveland for allodial territory.

<sup>2</sup> Stubbs, *Constit. Hist.*, p. 129.

<sup>3</sup> *Id. Ibid.*, ch. v.

<sup>4</sup> Coote thinks that the jurisdiction granted to landowners was to relieve the pressure of business in Scyremote.

other the chairman of these Courts; the one representative of the king's interest, the other that of the freemen; the former called gerefa before, and bailiff after the Conquest; the latter called earldorman before, and hundredman after the Conquest.

The president of the Seignorial Court seems to have been generally represented by a deputy. This man was probably the steward of the franchise, and not to be confounded with the Reve, who was the tenant's nominee. The latter was *ex officio* a representative of the township in the Hundred Court, and with four others of the former's inhabitants went to the latter's monthly meetings. Twice yearly the same quintet attended the County Court; and on the substitution for this Court of that of the itinerant justices, in the reign of Edward I., they continued to take their part in the business that had required their attendance in the former assembly. It is quite possible that the office of Steward and Reve may have been vested in one and the same person. Whether this be so or not, it is interesting to note that even in his own Court the landlord had by no means matters all his own way. The tendency to lessen the intimate connection between seignorial and magisterial powers is further evidenced by the institution of itinerant Justices in Eyre during Angevin times. On the other hand, the difficulty to entirely dissociate the two is evidenced by the retention to this day of landownership as a necessary qualification for a seat on the County Bench.

Leaving, however, this interesting subject for further consideration when our history has developed itself, we come now to inquire what business occupied the attention of the local courts.

It seems that most offences were punishable with fines. Even the lives of the various state dignitaries were valued at certain fixed sums, which however varied in the different kingdoms of the Heptarchy; so that he who indulged in the expensive luxury of regicide could reckon up beforehand the exact extent of his liability. Prices ran between 30,000<sup>1</sup> thrimsas for a king's, to 266 for a mere ceorl's, life. There was

<sup>1</sup> Stubbs, *Select Charters*, p. 65.

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even a money liability for the homicide of so insignificant a creature as a slave. If, however, a master so disfigured the poor creature as to destroy eye or tooth, he lost this piece of valuable personal property altogether, as the slave gained his freedom.

The mixed jurisdiction of the various courts is further demonstrated, by the disposal of most fines in certain proportions between the king and seigniorial master of the district in which they were incurred.

The king's share of the fines was collected by the shrefas, who served as county treasurers under the lieutenants (a new creation of King Alfred's, and a further attempt to centralise authority). The Shrefa, who presided over the Tourm, also provided for all the king's wants whilst travelling in his particular county, and was, no doubt, the precursor of that feudal official, the royal purveyor.

It is probable, however, that legal disputes over the rights of real property occupied the greater portion of the Court's time. Though far behind the Romans in legislative genius, Anglo-Saxon land legislation astonishes and sometimes shames the Englishman of to-day. It is quite probable that here again is an instance where Roman civilisation had taken root, and the advanced legal formality of obtaining the consent of the Witan to the written contract which converted Folcland into private property,<sup>1</sup> is another link which seems to connect it with the Ager Publicus of the former polity. But it was not only over the Bocland that the Anglo-Saxon evinced his legal acumen. "The limits of land," writes Mr. C. Wren Hoskyns, "were defined with scrupulous accuracy, and a register of deeds and decisions, including mortgages, was kept in the superior courts. The form of alienation or transfer was very simple, but its efficacy was secured by publicity. Before the Conquest, grants of land were enrolled in the shire book, after proclamation made in public shireremote, for any

<sup>1</sup> Called Bocland, of course, from the formality of entering the contract in a book. Mr. Allen has sought to prove that in very early Saxon times the conveyance of land was still carried on by symbols. Allen, *Enquiry*, p. 158.

to come in that could claim the lands conveyed, and this was as irreversible as the modern fine with proclamations or recovery. It might almost shame a reader of our Blue Book on 'Sale and Transfer of Land,' to find a Registry of Title, and what was then almost its equivalent, a 'Register of Assurances,' existing in the ancient English County Courts while the age of Christendom was yet written in three figures."<sup>1</sup>

<sup>1</sup> *Cobden Club Prize Essay Series.*

## Anglo-Saxon Period.

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### CHAPTER VII.

#### LAND TENURE AND AGRICULTURE.

In the preceding chapter we attempted to show the relationship between the lord, the people, and the land. We must keep in mind that the land, theoretically at any rate, some time or other belonged to the people, but that the people somehow or other came to belong to a lord. The next and consequent step was for the land to come into the lord's possession.

It is very clear that proprietary powers over either people or land would be useless so long as they included the one without the other. Directly the overlord was called upon to perform national service for his proprietary rights, he began to keep a jealous eye on both people and land. The State recognised his right thus to protect his interests, and this recognition afterwards took the form of the labour laws.

But in the days following immediately upon the Anglo-Saxon invasion there was no trade to tempt the people off the land, and a superabundance of soil, far in excess of all agricultural requirements, which remained outside the limits of individual ownership, and came to be technically known as the Folcland. In the earliest stages of our present subject it is therefore permissible to divide the soil of England under three heads : viz. (1) that constituting the area still belonging to the nation as a whole ; (2) that over which the nation retained part possession ; and (3) that entirely appropriated by private persons.

There was a natural tendency for the two first-mentioned portions to diminish, and for the last-named to increase. This is evidenced both by the innovation of Bocland charters and

the gradually increasing area which came to be known as king's demesne ; and it has been suggested that the Folcland must have been absorbed altogether by these two processes—an idea which is the more plausible, when there is but one allusion to this portion of the country as Folcland in all the Anglo-Saxon laws.<sup>1</sup> A large area of ground in the manorial system was known as the lord's demesne, which, with that of the king, made up the sum of British soil entirely under individual ownership. The bulk, however, of the land remained Folcland, as we shall show later on. Now it is important to observe that the demesne lands (or as they were called at this early period, the thane's inlands), were not wholly composed of the separate cultivated district round the lord's dwelling-house, but were supplemented by a few acre plots scattered over the arable fields of the community. These the lord farmed under the same peculiar restrictions of husbandry which we shall shortly show were in force on the people's lands. Not only would the rotation of cropping be the same, but their preparation for seed and harvest operations identical ; that is to say, they would have been performed by the community's labour and the lord's capital, or rather, what was equivalent in these times to capital, the lord's goods and chattels.

Either these separated portions of the demesnes represent lands seized by the lord from individuals as a set-off against neglected boon or predial services, or more likely they were the original possessions of the *primus inter pares*, which, on his conversion into the overlord, remained in his powerful grasp.

Another large area of the district was known as the lord's waste, over which the people possessed common rights, such as those of housebote, cartbote, ploughbote, fyrbote, etc. Another area was known as the common arable land of the manor, and here again the people's rights are clearly distinguishable. For though the lord gave evidence of his proprietary rights by claiming his *quid pro quo* over each man's tenancy, he could not alter the famous Trinity system of culti-

<sup>1</sup> *Leg. Aed. sen.*, c. 2. "A thor oththe on boclande, oththe on folclande."

vation, or deny the rights of common pasturage after harvest. Very possibly these instances of divided rights point to some remote past, when a class struggle occurred betwixt the seignorial and popular interests, ending in a compromise whereby neither side wholly ceded or wholly retained its original position. On the other hand, it is equally possible, as we shall now hope to show, that no such contest took place.

The lord's demesne, there is little doubt, originally constituted that portion of the Folcland arbitrarily, or otherwise, appropriated to private uses during the days of allodial tenure, or even earlier. But if the supreme authorities possessed only the crudest notions of political economy, they would have foreseen that every additional acre brought under cultivation tended to enhance the wealth of their dominions. It is therefore natural to infer that the utmost inducement would be held out to landed capitalists to extend their legitimate boundaries at the expense of the people's waste. It is the old story of the *Ager Publicus* over again. There are the wealthy squatters, the tenure of the occupatio, and the gradual absorption of the community's territory. But there was no code of agrarian laws, and no Gracchi to interfere between class and class.

But this is a theory which at first sight seems to lay the axe to the root of all manorial rights, from the days when private estates in land were small, and the people's waste enormous, to the present age, when the latter has dwindled down to rustic cricket fields and gorse-sown village greens. It, however, does not necessarily do anything of the kind. In all these theoretical questions regarding origin it is essential that the student should keep ever before him a picture of the situation at its very beginning. The most noticeable feature of the country throughout the Anglo-Saxon period was its vast areas of forest land, interspersed with which were marshes, moors, and scrub. Infinitesimally minute in comparison were the rare patches of cultivated ground<sup>1</sup> about the village. A few, probably a very

<sup>1</sup> The sparsity of the population can scarcely be exaggerated. At the very end of the Anglo-Saxon era, we find the census of a great county like Yorkshire consisting of only 9,963 souls. Surrey contained 4,547, Middlesex, 2,289. The eastern parts of the island were, however, more

few, of these centres of human life, together with an enormous, impenetrable, roadless tract of the waste, constituted the territories of some petty Anglo-Saxon chieftain. Save for purposes of the chase, no one would care to dive far into such cheerless solitudes, resembling more than anything else the Australian bush, but, in days prior to the introduction of the compass, even more without hope of ultimate egress for the lost traveller.

Is it then at all likely that any lord, however arbitrary and exacting, would care to lay claim to the proprietary rights of such useless wildernesses? Who could estimate the pannage dues of the few swine hidden in their primeval depths? or the quantity of estovers taken? The scanty wants of some dozen or so families in building and firing materials would but help to clear ground for future agriculture. The few live stock of the village would improve rather than spoil its coarse herbage; and the requirements of twenty times as large a population in food and fuel would result in no appreciable difference to either its stores of game and fish, or its supply of timber and turf. On the other hand, the assumption of proprietary rights by the lord over what was universally recognised as people's ground, so long as it in no way interfered with their few wants in estovers, piscary, turbary, and the like, would not excite popular opposition.

Times were bad, famines frequent; and he who made two ears of corn grow where one formerly existed, was more of a public benefactor then than he has ever been since. The lord's capital was as much needed for successful agriculture as the people's labour. Even when the community performed their tillage operations as tenants, it was from the lord's houses, implements, and stock that their outfit came.<sup>1</sup>

We can imagine a time when the cultivated area of the township would not have sufficed to employ all the able and willing labour of the community. A mutual arrangement

densely populated. Thus Norfolk contained 28,365, and Suffolk, 22,098. The whole of England numbered 900,785. I cannot agree with Mr. Sharon Turner's view, in estimating these numbers as referring to families, and multiplying them by five. *Anglo-Saxons*, bk. viii., vol. iii., p. 256.

<sup>1</sup> Seeböhm, *op. cit.*, p. 133.

would naturally be come to between the lord and the people, whereby the former supplied capital and the latter labour, both amicably dividing the proceeds of produce in some proportion equal to the sacrifices made on either side. On the death of an agriculturist his heirs or executors would make some arrangement with their lord for the perpetuation of his loan in farm stock; but to recoup himself for the wear and tear of implements and the losses in his live stock by disease or old age, as well as to uphold his proprietary rights over the loan, the lord would demand and receive some valuable beast. This we believe to have been the origin of the heriot, which, like many of the old customs, had its peaceful as well as its warlike adaptations, and which, though a Danish usage, was not necessarily a Danish innovation. It was also the origin of the lands held in villeinage, which were in this way rendered partly under seigniorial and partly under popular control.

It seems therefore probable that, up to a certain period, possibly that particular one at which the system of Bocland was inaugurated, kings might appropriate as much Folcland as they liked for their demesne, and lords might slice off large corners of it for their semi-private uses, without acting in the least tyrannically; rather, on the contrary, conferring a lasting benefit on the community at large. A very different state of this question occurred afterwards, when the Norman conqueror, for purposes economically useless, afforested half Hampshire, and devastated in the process, not only common wastes, but private lands under arable cultivation.

It is, however, likely that, as in the case of the Roman *Ager Publicus*, there came a time when the appropriation of the people's waste could only be carried out under certain conditions, such as reserving the popular rights of turbary, estovers, and the like, but vesting all other proprietary rights in individual hands. It furthermore seems sufficiently clear that the people must have been able to prove a very strong proprietary title, in order to have succeeded in retaining such valuable powers over the lord's waste and common field, as the rights of pasturage undoubtedly are. And, on the other hand, the lord was able to show the same strongly vested interest in the

appropriated soil as that which his prototype, the Roman "possessor," had substantiated before so judicial a political opponent as Tiberius Gracchus.

It would appear then, after all, as though there had been very little class contest; the lord, on the one hand, probably taking by a gradual and piecemeal process all he would require, and the people tranquilly ceding these matters as immaterial, so long as their necessary requirements in the waste and common field were reserved.

We are not without evidence that what has been thus briefly sketched represents the true state of the case; but we must not rely upon that afforded by mediæval lawyers in order to reconcile the altered views of Norman landownership with the ancient seigniorial rights of the Anglo-Saxon gentry. The only trustworthy evidence is that contained in the scant allusions of the Anglo-Saxon statute book,<sup>1</sup> and charters to Lœnland, Folcland, and Bocland; but we must make sure of the construction originally intended for such terms by those who used them.

Blackstone, for example, merely alludes to the extra-manorial soil as lord's waste, and distinguishes between what of the manorial lands were held in free socage as Bocland, and what were held in villeinage as Folcland.<sup>2</sup> It was convenient for those connected with the legal profession throughout the feudal era to ignore any earlier history of the waste than that which started from the Statutes of Merton and II. Westminster. Mr. Seebohm bases an interesting description of Anglo-Saxon land tenure on similarly false premisses. He considers that all the soil of England, originally Folcland, became at the time when a monarchical economy was introduced, the king's demesnes. Now where we take exception to Mr. Seebohm's account is, in the expression king's demesne, which we would replace by some term signifying royal jurisdiction rights. If we exclude the small area of land known as the crown demesnes, the sovereign's prerogative over the English soil, like the seigniorial prerogative over the manor, did not extend beyond certain

<sup>1</sup> Comp. *Leg. Aelf.*, c. 37; *Leg. Ead.*, c. 2.

<sup>2</sup> Blackstone, *Comm.*, bk. ii., ch. 2, p. 90.

fiscal and jurisdictional rights, such as were understood by the expressions *sac*, *soc*, *toll*, and *team*—rights, be it borne in mind, that could not be exercised over an uninhabited waste. When a communal economy was replaced by a monarchical government, the seigniorial rights over all the land in the country, except those already appropriated by the allodialists, became the king's. Henceforth the extra-manorial waste assumed a twofold aspect, being subject during the periods of its temporary use to royal jurisdiction, and by the side of this intermittent authority to popular rights of pasturage, etc.

This dual control of the national waste ground was very different to the economy observed in the royal demesnes, which were lands held and cultivated under the king's personal direction, and entirely outside of and free from popular rights and interference. Mr. Seeböhm, therefore, in identifying the Folcland with these royal demesnes, has made out that the Anglo-Saxon dynasty was even more despotic than the Norman. It is, however, an error into which any one who has studied the terms contained in the Doomsday survey is liable to fall. The *terra regis* is there interpreted by the Norman lawyers as signifying the royal demesnes, whereas what it really meant was the royal manors, over which the king occupied the same position as any other lord, and this is tantamount to saying that he held seigniorial jurisdiction over the entire district, and only proprietary rights over the small area of lands in hand.

Of the terms used in the Anglo-Saxon records, we find, it is true, only once the Bocland contrasted with the Folcland in the legislation of the period;<sup>1</sup> but we have frequent allusions to both terms singly in either laws or charters,<sup>2</sup> and one other record of both together in the will of Duke Alfred.<sup>3</sup> From these we hope now to form some definite conclusion as to their significance. Perhaps the various processes by which a new manor was erected will best illustrate the distinctions between these terms as used by the Anglo-Saxon lawyers. The formation of a new manor generally came about by the action of

<sup>1</sup> *Leg. Æd.*, 2.

<sup>2</sup> *Leg. Aelf.*, c. 41; *Cod. Diplom.*, cclxxxi.

<sup>3</sup> *Cod. Diplom.* cccvii. and *Cod. Diplom.* cclxxxv.

some portionless younger son of an Anglo-Saxon landlord, who penetrated into the waste, built dwellings for himself and followers, and cultivated the surrounding land. First there would be the settlement, which earned for the portion of the waste thus appropriated the term *Lænland*;<sup>1</sup> then its conversion into a manor, a process which was not complete until two acts of the new overlord had received legal recognition. In the first place, the assumption of landed proprietorship over that part of the people's land henceforth to be known as lord's demesne, had to be confirmed by charter; and in the second place, the grant of seignorial jurisdiction over waste, common field, demesne land, and people, had to be obtained from the king.<sup>2</sup> Save over the land appropriated to the private use of individuals, no interference with popular rights took place, and thus it is that the term *Bocland* is rightly confined by Blackstone to the tenemental lands in free socage. There was, however, a lingering trace of national control over these demesne lands, and rightly so, for they represented a complete surrender both of royal as well as popular claims. Hence we find that the succession to the *Bocland* is controlled by the National Statute Book, and entailed, on pain of its reversion into *Folcland*, strictly amongst the descendants of the original possessor.<sup>3</sup> In contradistinction to the *Bocland*, the rest of the manorial lands were still the people's, even though cultivated by their ploughs instead of pastured by their cattle; hence Blackstone is also right in applying the term *Folcland* to the lands in villeinage. But objecting, like all the other mediæval lawyers, to the recognition of popular proprietorship, or to any limitation of seignorial jurisdiction over the waste, he is careful to distinguish between the district to which he applies the term *Folcland* and that to which he applies the term lord's waste.<sup>4</sup>

<sup>1</sup> Seebohm, *English Village Community*, ed. 4, p. 168.

<sup>2</sup> The Witan did not interfere with the king's prerogative over jurisdictionary grants. *Vide* Mr. H. Adams, *Anglo-Saxon Courts of Law*, p. 50, in *Essays on Anglo-Saxon Laws*.

<sup>3</sup> Cap. 41 *Leg. Aelf.*, *Essays on Anglo-Saxon Laws*; C. Lodge, *Land Laws*, p. 72.

<sup>4</sup> Dalrymple identifies the *Bocland* with *Thainland*, and the *Folcland* with *Beveland*, a probable supposition, but one which requires some fur-

In another sense the uncultivated lands may be represented as the national property hitherto unappropriated, and the common arable land as that part of it appropriated by sections of the community; both, however, still retaining their popular characteristics. The reward of national services and the defrayment of national expenses were uses to which the Folcland was generally put, hence we find Palgrave defining it as *ager fiscalis*, and Cabot Lodge<sup>1</sup> as *Ager Vectigalis*; hence also we see the reason why it was under the special protection of the witan. Totally opposed to lands of this description was the Bocland, which was under private jurisdiction and subject to individual ownership instead of that of the State. Its owners would, however, possess seigniorial rights over a larger area of ground comprised by their manors, which, as Cabot Lodge has pointed out, by the laws of Hen. I. resulted in both kinds of lands, viz. private and public, becoming merged under the one name Bocland, though in principle the latter continued to be partly subject to popular rights.

Our view of early land tenure reduces the question of seigniorial usurpation to the limits of the various manorial demesne lands, and even here it is more than probable that the early times at which this process was brought about, fully justified the step in the eyes of those whose interests were most affected. Whatever way we view the subject there appears very little to justify the opponents of the manorial theory in clamouring for a repeal of all the Enclosure Acts from now up to the date of that greatest of Enclosure Acts—the Statute of Merton.<sup>2</sup> It may indeed require something beyond and behind the manorial theory to reconcile what we know of ancient systems of land tenure with what we retain of common rights, and to explain away the discrepancies in the Statute of Quia Emptores. For such reasons it is advantageous that Mr. Scruton has been able to disconnect the manorial nexus by pointing out instances where rights of common exist apart

ther corroboration than is afforded by early records. *Vide Dalrymple, Hist. of Introduction of Feudal System.*

<sup>1</sup> *Essays on Anglo-Saxon Law*, p. 78.

<sup>2</sup> 20 Henry III.

from a manor ; and that Mr. Percival Birkett has more recently demonstrated<sup>1</sup> that in Bracton's time there must have been a state of things not consistent with this same manorial theory, for which the law has had to invent the fiction of a lost grant. But though Norman lawyers may have based their legal lore on fallacious premisses, though Elizabethan judges may have erred in their rulings, and though the people in primitive times knew nothing of the mineral wealth beneath the soil that they were thus tacitly conceding, there is nothing, surely, in all this to menace, say, the Crown's title to the 130,000 forest acres of Dartmoor, or the 60,000 acres of the New Forest, or to challenge manorial rights in Epping Forest and the Malvern Hills?

The people knew well enough both, in England and Germany, how to defend their liberties later on ; and even to this day their claim of pasturage on the fallows and stubbles of the common lands remains unchallenged.<sup>2</sup>

In valleys, the lord's demesnes stretched along the streams at the bottom. The common pasturage ground and Lammas meadows adjoined the water side ; above were the arable lands separated by untilled balks into numerous strips, as far as the conformation of the ground would admit of ploughing. Then came the sheep pasturage, and lastly, high above all, the woodlands and waste. In level districts, as in the former case, the lord's waste and the common field occupied the outer portion of the Tün.<sup>3</sup> On hilly grounds an unusual mode of husbandry, attributed to Mountain tribes, seems to have existed. Such are the terraces or lynchets of the Wiltshire, Dorset, Hampshire, and Sussex highlands, the butts of Carmarthenshire, the reins along the slopes of Wharfdale, Coverdale, Wensleydale, and Nidderdale, the "hanging shaws" of Chollerton ; and such was the cultivation pursued in other hilly places throughout England, parts of Scotland, the Riviera, Peru, and even China, the origin of which Mr. Gomme has

<sup>1</sup> Compare his paper, *The Origin of Rights of Common* read before the Incorporated Law Society at Plymouth, 1891.

<sup>2</sup> Comp. Ket's Rebellion in Tudor Times and *The Peasants' War in Germany that followed the Reformation.*

<sup>3</sup> Gomme, *Village Community*, c. iv.

attributed to the spade husbandry of some pre-Aryan race. But apart from this form of agriculture, the rest of England's soil seems to have been split up and uniformly distributed in the manner described, *i.e.* the demesne lands nearest the villages, the common arable field next, and the lord's waste farthest off.

It may at first cause some wonder why this should have been uniformly so throughout the country. It must be, however, borne in mind that the most fertile and accommodating land first attracted the human settlement, and that intervening wastes would isolate such from similar communities.

On the appearance of the overlord, the cultivated centres would pass into his possession. Then his subjects (for they were little less) would reserve, and he would assume, the usual rights over the surrounding rim of waste, thus bringing about that uniformity of land distribution, our reader's wonder at which we have already anticipated. As in process of time the cultivated oases around each village spread wider and wider, they would come in contact with other cultivated districts, until both the outer and inner circles of people's common and lord's waste respectively, not only absorbed the whole uncultivated area between village and village, but were themselves brought under the mellowing influence of the plough. This process, however, cannot even yet be called complete, as long as an acre of untilled, unenclosed soil has escaped the inroads of the Enclosure Acts.

How far back in England's history this system of common field cultivation, with its contingent people's waste, really goes, is a difficult question. We have evidence of it in Britain at a very primitive stage. Mr. Seeböhm has drawn attention to various codes of Welsh legislation which tend further than any other record to support the theory that it originated in the agricultural economy of some tribal community. Without traversing in detail the ground already trodden by this well-known author, it will suffice if we say that he traces out to a legitimate conclusion a Welsh system of common field culture, which in all its salient features is reconcilable with that similar economy adopted by Anglo-

Saxon agriculturists. There is, however, a nearer approach to a tribal economy in the common use by the Welshmen, not only of beasts of burden and implements, but of the fruits of their combined industry.

The law itself divided the earth's produce in certain fixed proportions. That of the first "erw," or strip, was the due of the ploughman, that of the second went to the owner of the implement used, that of the third to the master of the outside ox, that of the fourth to the master of the inside beast, the fifth to the driver, the sixth, seventh, and eighth to the owner of the team.<sup>1</sup> This was co-operative farming with a vengeance, and might well form the basis of some future 20th century system.

Now let us turn to the earliest evidence of it at our disposal in Anglo-Saxon soil culture.

Just as the counties had been sub-divided into hundreds and tithings for purposes of local government, and into parishes for the purposes of ecclesiastical government, so also we shall now show they were divided into townships, for purposes of estate management. The word "township," or "tun," is derived from the Saxon "tynan," (to enclose), and though it first denoted merely the lord's homestead and land in hand, it soon came to include the whole of each area under seigniorial jurisdiction.

If the estate was of such proportions as to have induced its lord to build a separate church and maintain a chaplain, the township was conterminous with the parish.

The internal economy of a large manor was arranged so that a proportion of the lands were parcelled out amongst the kindred and free retainers of the lord or atheling, who gave their services in war in exchange for the usufruct or life interest of their holdings. So long as the latter performed faithful service to the former, so long were they entitled to their beneficia or feuds, but after a time their services became hereditary.<sup>2</sup>

This system of rear-vassalage or sub-infeudation, which in

<sup>1</sup> Seebohm, *Village Community*. Id. *Ibid.*, c. vi.

<sup>2</sup> Guizot, *Essai sur l'Histoire de France*, pp. 128-143.

Norman times became so intricate, did not progress to any considerable extent in pre-Conquest days, for both the king and the king's thanes found that sub-infeudation interfered with their independence and reversionary interests, since whenever lands became once more theirs they reverted subject to the rights of the rear-vassalage. The grants to sub-vassals were for this cause never hereditary, though in later Saxon times the Bocland charters partook of the nature of leases for two or more lives. But whatever the form of tenure may have been, a system of communal agriculture prevailed. Let us now more especially examine that on the land partly public and partly private.

The tract of the township farmed by the villeins, or (to be strictly synchronous in our language) geburs, was known as the gafol, gesiths, or geneats land, in contradistinction to the thane's inland, i.e. the lord's lands in hand. The geburs included the landholders and superior tenantry. They possessed fixity of tenure so long as they performed their predial and agricultural services.<sup>1</sup> Most geburs had apportioned to them about ten acres or strips in each of the divisions of the common field.<sup>2</sup> Instead of resorting to the communal practice of the Welsh tribal husbandry, the gebur looked to the overlord for plough beasts and tackle. He was in fact started in life by the landed proprietor, who not only supplied him with his home-stead and the stuht or outfit of two oxen and implements necessary to cultivate a yard-land, but also added a few necessary live stock to afford such dietetic wants as eggs and milk; and even one division of land in the common field was cultivated and sown with oats for him. Everything of course reverted to the landlord at death, and everything was paid for in some shape or form. There was the Michaelmas charge of gafol pence and the gafol ploughing. But besides this, the gebur had to perform predial service on the inland twice a week, and oftener still in harvest and spring tide, and for the grass

<sup>1</sup> Palgrave, *Rise and Fall of the English Commonwealth*, vol. i., pt. i., p. 18.

<sup>2</sup> *Rectitudines singularum Personarum*, A.D. 900, *Vide Seeböhm, Village Community*, ch. v.

"yrth," or share of the Lammas meadows, three additional acres of inland ploughing were required of him. The lesser tenantry of the cotter class, requiring no loan of plough oxen or tackle, performed proportionately less service. They were free from land gafol, sowed only one day a week on the inland, but paid their hearth penny and Martinmas scot just as though they occupied hides on the common field, instead of some half-dozen acres only.<sup>1</sup>

The theows, wealhs, or slaves, made up the remaining inhabitants of the township. They performed all menial labour of the estate, but were often put to work side by side with the lowest class of geburs, though not entitled like the latter to any remuneration beyond board and lodging. Occasionally some individual's life-long frugality obtained for him the purchase money of his freedom, or some act of devotion won the same from an indulgent master; and as Christianity spread, the class gradually disappeared. Otherwise, the theow was as much a chattel of his lord as the latter's hounds, excepting (what we have elsewhere mentioned) the liability of the lord to fines if he damaged or killed his slave.

Turning back to the account already given of early Germanic tenure, we can trace a close resemblance in its Landes Gemeinde and Dorf to the "Gau," or common territory, and township of the Anglo-Saxon polity. The Gemeinanger answered to the Folcland, the Feldmark to the Gesetland, the three huren to its three divisions of spring corn, winter corn, and fallow. The Hof of the Germanic overlord was the same fenced court-house as the tūn of the Saxon overlord. His Hörige corresponded to the geburs and theows.<sup>2</sup> Further, there is evidence in the limited control of the Anglo-Saxon landlord over the common lands, and in his almost unlimited judicial authority over the people, of those two distinct aspects which Sir Robert Morier has emphasised in the Teutonic freeman. As we have already pointed out, the latter, within the pale of his home-stead, was in all aspects autocratic, without it, he was but a

<sup>1</sup> Seeböhm, *Village Community*, c. v.

<sup>2</sup> Sir Robert Morier, *Prussian Land Tenure*, in the *Cobden Club Prize Essay Series*.

commoner of the Mark. As we shall shortly come to see, the landowner of both nationalities was a Miles in virtue of his being a holder of seignorial rights, and in this manner can be traced the connecting link between politics and agriculture in the community of the township.

It is difficult to see how, in such a system of land tenure and agriculture as we have thus briefly described, an able-bodied pauper could exist. Within the wide fringe of waste which isolated the lord and his people from neighbouring lords and their peoples, there was enough work for every one. He who had no part nor lot in the lands of the district was at any rate a household slave, and so in some way dependent upon his lord for livelihood.

The latter's capital was the thews and sinews of the people, by aid of which he obtained his own and their food, dwellings, implements, and utensils of everyday use, as well as all other luxuries or necessaries of life. From the people's point of view, their labour was, as it is now, their sole capital. So long as the land was sufficient to employ their whole stock of energy and yield life's necessities, they felt secure. Any addition to their numbers signified extra mouths to feed, and consequently a diminution in the common food supply; and was to be dreaded as greatly as is competition in the labour market at the present day. We may well believe, therefore, that the people would strongly resent the intrusion of strangers, whatever their lord might desire on the subject. Thus we find that whoever traversed that essentially people's portion of the district, the outer rim of wooded waste, had, as late as King Ina's days, to shout or blow a horn in order to attract attention. The lord, on the other hand, would scarcely brook any diminution in his labour supply; but there was little fear at this period of any individual skulking off only to find similar precautions observed on the other side of the waste bordering on the next village. It was later on, after the Norman Conquest, when landlords had to guard against this form of depletion of their labour supply.

Such then was the famous agricultural system, which, at the period now reached, was universal, and was to continue so far as

long time to come. It was to provoke the bloodshed of Ket's rebellion; it was to brave the exposure of its defects by that sound critic, Fitzherbert;<sup>1</sup> to stand out against the adverse reasoning of the Flemish authors;<sup>2</sup> it was to be carried across the seas by the emigrant passengers of the *Mayflower* to New England; it was to defy the intolerant language of Young;<sup>3</sup> it was to be ignorantly described by authors like Marshall,<sup>4</sup> who possessed no true key to its explanation, and learnedly discussed by theorists like Seeböhm, who drew from it inferences for which, perhaps in reality, it afforded no basis; and lastly, it was to survive the onslaughts of ten thousand Enclosure Acts, and afford the 19th century agriculturist an ocular proof of its existence in the royal manor of Hitchin and other parts of this country.

Its birth in Europe is hidden behind a barrier of pre-historic ages. It may have been brought across two continents by some Aryan tribe from India,<sup>5</sup> it may have sprung into life with the Mark system,<sup>6</sup> it may have owed its existence here to some transitional stage of ancient British economy,<sup>7</sup> or it may have been the sporadic inspiration of some early European statesman's brain. These points must remain for ever undecided. All we know for certain is, that it was the system of husbandry pursued in the Saxon lord's time,<sup>8</sup> that Saxon ceorls mowed and fenced its common meadow doles, that Saxon serfs held its yard-lands in villeinage, that Saxon clergy claimed the produce of its tenth acre strip as tithe,<sup>9</sup> that early Norman poets sang

<sup>1</sup> *Vide his Works.*

<sup>2</sup> Such as Hartlib, Worledge, Blith, etc., etc.

<sup>3</sup> Young was especially indignant at finding it even in France.

<sup>4</sup> Marshall wrote in the 18th century, and Sir Henry Maine uses the very expression adopted by us in describing Marshall's views of the system.

<sup>5</sup> As Sir Henry Maine has thought.

<sup>6</sup> As Bishop Stubbs would probably believe.

<sup>7</sup> As Seeböhm thinks.

<sup>8</sup> *Vide* Seeböhm, *Eng. Village Community*, ch. v., who 'cites expressions in the Saxon version of the parables of the Prodigal Son and Unjust Steward as evidences.'

<sup>9</sup> *Ibid.*, ch. iv. Seeböhm cites the Saxon Laws.

about it,<sup>1</sup> and early Norman prose authors discussed it;<sup>2</sup> that its measurements of hide and acre owed their derivation to what one man could plough respectively in a year and in a day; that there was a good deal of quarrelling over its headlands, a good deal of waste ground about its divisions, a good deal of time lost in getting about it, and that altogether it was a system destructive of good husbandry.

But was this Saxon practice of land tenure, strictly speaking, feudal? It was, and it was not. There was the military service, the lord and vassal, and the State reversionary interest on the failure of male heirs;<sup>3</sup> but there was no primogeniture, for, on the contrary, the custom of gavelkind, still existing in Kent, extended the hereditary succession to all the children, while a now local practice, called "Borough English," also still alive, entailed the estates on the youngest son. Again, upon the death of the son without issue, the father inherited, whereas by Norman legislation, only recently repealed, he was excluded.

The chief distinction, from a lawyer's point of view, between the Saxon and the Norman system of land legislation is very clearly expressed by Mr. Williams in his introductory chapter on "The Principles of the Law of Real Property." He says, "Before the Conquest, landowners were subject to military duties; and to a soldier it would matter little whether he fought by reason of tenure or for any other reason. The distinction between his services being annexed to his *land*, and their being annexed to the *tenure of his land*, would not strike him as very important." The system was so far feudal, if we compare it with that of the free Danes, who, with not a single serf in their hosts, overthrew the priest and lord-ridden Anglo-Saxon race in those thirteen campaigns which gave the crown of all England to Canute. But it was free in comparison with that of Continental nationalities. The ancient French system was at first, no doubt, similar to that we have just described. The

<sup>1</sup> *Vision of Piers the Plowman.*

<sup>2</sup> Walter of Henley, etc.

<sup>3</sup> Compare also *Canute's Secular Dooms*, cap. 71. Stubbs, *Select Charters*, pt. ii., p. 74, ed. 5.

"Alleux" or allodial lands were held by the "Libres." They were divided into counties and subdivided into "vills" and "hundreds," presided over by the Count and his subordinates, the "Vicarii" and "Centenarii." The "Feodaux" or feudal lands were held by "Leuds" who judged their own people and led them to war; but such lands were not contained in the classification we have given for the Alleux, nor were their peoples subject to the officers of the latter.<sup>1</sup> There were too Allodia and Allodiarii in Italy and elsewhere on the Continent. But the tendency was for allodial property to become feudal, so that before the beginning of the 10th century land abroad was almost entirely held by feoffees.

It is at first surprising to learn that the possessor in many cases voluntarily converted his allodial lands into feudal. It was, however, found that the king's vassals were in many respects better treated than the freemen, and large quantities of allodialists presented their lands to the king, to receive them back from him as beneficia or fiefs. This was especially characteristic of the turbulent days which ensued on the death of Charlemagne, when everybody stood in need of a protector, and was therefore anxious to incorporate himself among the lords of the feudal monarchy. Thus came about that maxim in French law: "Nulle terre sans seigneur"; so, though allodialism lingered on in Languedoc, Catalonia, and the Low Countries until even the 12th century, the great bulk of Continental lands had become feudal in Saxon days.<sup>2</sup> But in ante-Norman times the powers of the English king were less than those wielded by Continental despots, the nobles were more independent, the land superabundant; all of which causes militated against the exchange of the freedom enjoyed by allodialism for the servitude inflicted by severe feudal customs. The Anglo-Saxon ferocity required frequent blood-letting from Norman lances before it would brook the consequences of homage, reliefs, wardships, marriages, and other burdens inseparable from the Continental system of feudalism.

<sup>1</sup> *Vide* Montesquieu, *L'Esprit des Lois*, lib. 30-31.

<sup>2</sup> *Id. Ibid.*, lib. xxxi., c. 8, vol. 2, p. 431. Compare also Rees, *Enclyco.*, *sub voc.* "Allodium."

Even, however, in England the arbitrary power of the aristocracy had induced the common people, whether inhabiting country or borough, to purchase the protection and patronage of some particular nobleman by annual payments ; and some of these very nobility, if not powerful enough to stand alone, formed confederacies with the object of united action against a common aggressor.<sup>1</sup>

So far we have alluded to one class only of land taxation, viz. the *Trinoda Necessitas* ; but besides this there was the *Dane-gelt*, instituted by Ethelred the Unready, abolished by Edward the Confessor, reinstated by the Conqueror, once more released by Henry I., and finally so by Stephen.<sup>2</sup>

It was levied for purposes of national defence against, or as bribes to the Danes, and was, if not the origin of, at any rate the precedent for, the later land tax. It amounted to one shilling per hide, and was imposed by the State.<sup>3</sup>

There was, too, the tithe charge on the produce of the land, a subject, however, which requires further discussion in a fresh chapter.

<sup>1</sup> Hume mentions a bond of this kind called *sodalitium*.

<sup>2</sup> Jacob, *Law Dictionary*, sub voc. "Danegelt."

<sup>3</sup> Hume, *History of England*, Anglo-Saxon Period, Appendix I.

## The Anglo-Saxon Period.

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### CHAPTER VIII.

#### ITS CUSTOMS.

If we study the Anglo-Saxon Chronicle, we shall be struck by the frequent recurrence of famine and pestilence, disasters not infrequently associated with signs in the heavens.<sup>1</sup> These events are markedly features of the period under discussion. For up to the Teutonic invasion there is but one record of famine; that occurring in A.D. 48, and accounted for by the invasion of Claudio the preceding year—an event which no doubt interrupted what little agriculture prevailed in those early times. In 664, on the 3rd of May the sun was eclipsed, and shortly after there was a great pestilence. In 671 was a great destruction among the birds. In 685 the air rained blood, and milk and butter were turned to blood. 761 was a severe winter. 793 was fraught with dire forebodings, such as whirlwinds and fiery dragons in the air, followed by a great famine. 895, 896, 897, were years memorable for the mortality amongst men and cattle. 976 was a year of great famine, and was remarkable for the appearance of a fiery portent, generally at midnight (probably the aurora borealis), but was unaccompanied by disaster. In 986 first came the great murrain among cattle. On the 28th September, 1014, was a great sea-flood, which washed away many vills and countless numbers of people. In 1030 arose the wildfire, such as no man before remembered. In 1039 was the great wind, and the sester of wheat went up to 35 pence, and even higher. In 1041 it was

<sup>1</sup> *Vide* the English translation of the Saxon Chronicle in *Monumenta Hist. Brit.*

a very heavy time : ill seasons for fruits of the earth ; losses also by pestilence and storm among cattle. In 1044 there was a very great famine, sending the sester<sup>1</sup> of wheat higher still (to 60 pence and over). In 1046 was the severest winter within man's memory, causing mortality among men, murrain of cattle, and great losses of birds and fish. In 1047 there was great mortality over all England. In 1053 came the strong wind on Thomas-mass night, which did much harm ; and in 1053 it recurred on December 21st, the very same night as in the year before.

When we add to this long list of bad seasons, panics from hairy stars, solar circles, and lunar eclipses,—the constant ravages of fierce warfare between Saxon and Briton, Saxon and Saxon, Saxon and Dane, and Saxon and Norman ; the calls upon the husbandman's money<sup>2</sup> and time that such a state of affairs involved, and lastly Teutonic ignorance of husbandry ; we fear our history must record a retrograde movement towards the old savage times of the aborigines. We can only speculate as to the nature of these destructive visitations which (as when the rain and milk became blood) remind us of the ten plagues of Egypt. We wonder if the constantly recurring murrain was due to rinderpest, pleuro-pneumonia, foot and mouth disease, or other modern epizootic complaints. What were the fiery dragons and other portents which preceded the great famine ? What caused the destructive tidal wave of 1014 ? Was it the extreme drought of 1030 that set all the rough grasses and wooded wastes in a blaze like a modern prairie fire ? Was 1041 as bad a season as 1879 ? and was the agricultural depression as severe then as now ? Was the winter of 1046 more severe than that of 1890,

<sup>1</sup> The sester was the same as the quarter. A quarter of wheat rose to 60 pennies, or about 15 shillings. This far exceeded its price during the great famine of Queen Elizabeth's time, when the quarter was sold for 4 pounds. Hume, *Hist. of Engl.*, Append. I.

<sup>2</sup> "And in the same year (1052) King Edward abolished the heregeld . . . That geld distressed all the English nation during so long a time, as it is here above written ; that was ever before other gelds, which were variously paid and wherewith the people were manifoldly distressed." *Anglo-Saxon Chronicle*. The heregeld was a tax for the army.

when birds died in the bushes from want of berries, and fishes in the frozen ponds from want of air?<sup>1</sup> Imagination must furnish each reader's answer, for history does not tell us much beyond the bare facts; though absence of united action, the want of some central authority to organise relief measures, and the total cessation of all foreign corn trade, may explain the frequency of famine, and (since starving men and cattle fall easy victims to any ailment) the frequency of pestilence too.

The most noticeable features of the country in Saxon times were vast areas of forest lands, such as Andred wood in<sup>2</sup> Kent, the Bruneswald in Lincolnshire, or Sherwood in Notts. Wolds of sheep pasturage, favoured wheat-bearing uplands; firm and verdant horse fens, on which fed mares and colts, cattle, sheep, and geese; brown marshes and peaty bogs encircling ponds and meres, and here and there clusters of mud and wood-battened dwellings grouped around the holder's house, broke the monotony of the tree-covered landscape. The forests teemed with life, such as deer, hares, badgers, and pheasants, and in their open glades might be seen partridges and plovers, whilst in their thickets lurked the wolf and wild boar. The game was preserved by forest laws, severe enough in Canute's reign, but mild in comparison with the laws to come, when the woods were to echo the "recheate" or "morte" of a Norman horn. The timber itself was almost worthless, but its pannage,<sup>3</sup> in the form of mast, supported large herds of tame swine and formed a noticeable feature in the agriculture of that period.

The lord lived in his square hall of unplanned wood,<sup>4</sup> with

<sup>1</sup> The daily papers, during the severe December frost of 1890, were full of piscatorial advice as to the making of holes in the ice to give the fish air and a chance for life.

<sup>2</sup> "This port (Limenmouth) is in the eastern part of Kent, at the east end of the great wood which we call Andred; the wood is in length from east to west 120 miles or longer, and 30 miles broad."—*Anglo-Saxon Chronicle*, A.D. 898.

<sup>3</sup> In *Domesday Book* pannage is returned for 16,535 hogs in Middlesex, and in Essex (then entire forest) for 92,991. One nobleman left in his will 2,000 swine to his two daughters.

<sup>4</sup> See the description of Gatacre Hall in Shropshire, *Archæologia*, vol. iii., p. 112.

its pillars composed of oak trees and its roof-rafters of their roots. It was at first, for purposes of defence, in the form of a quadrangle, the windows looking into the yard. Often a deep ditch filled with water surrounded the buildings, the back of which would be topped with a palisade of pointed planks, and the only means of ingress was over a single draw-bridge. The interior consisted of one-storeyed sheds, stone below and timber above, with high-pitched roofs. The principal apartment was the hall, long, wide, and low, its roof unceiled and composed of rough-hewn timbers blackened by the smoke from the wood in the reredosse. The floor would be unpaved, and the wooden walls rudely decorated with weapons or covered with hangings. The lord's dining table, composed of unplanned planking, was T shaped ; the top of the letter representing the raised dais, in the middle of which sat the lord and his lady. That portion of the table allotted to the housecarles was not elevated, and the roof above was sometimes even open to the sky. On the same ground plan as the hall were the sleeping apartments, often opening out into one common ante-chamber. These were seldom wind or weather-proof, though the draught was sometimes intercepted by rich hangings. The domestics slept in mere cells, and the furniture of even the best bedrooms was of the rudest nature. A wooden framework enclosing a nest of straw served as a bed, and the clothes were one or two rugs or sheep-skins. The wealthier Saxon etheling kept a large following of stout men-at-arms, who combined domestic services with those of defence. His lady often presided over a bevy of bower-maidens, chosen for their beauty and good breeding, whom she brought up and educated in the art of needlework under her watchful eye.

Around this lord's dwelling-house were grouped the villagers' houses, each in its own grounds, with its barn and stables so constructed as to form an interior yard into which would be driven at night the most valuable cattle for the sake of security.

In a central and commanding position stood the wooden church, used as a place of worship on Sundays, a fortress in

troublous times, a storehouse for the valuables of the community on week days, and a public record office at all times.

To women was entrusted the care of the future country gentleman's earlier infancy. On the death of their father his children remained with their mother, who, if not otherwise provided for, was allowed annually six shillings, a cow in summer, and an ox in winter, towards the maintenance of each one. The frumstol or head-seat in the house was, however, occupied by the father's relations until the boy repossessed it on coming of age. One of King Ina's laws provided for the fostering of a foundling at the rate of six shillings for the first year, twelve the next, and thirty the third ; after that, it varied in proportion to his "white," or personal beauty. Infancy terminated the seventh year, and childhood began the eighth. The child's education consisted of exercises in muscular agility; and he was encouraged to compete in wrestling and other rough sports with his compeers. The age between childhood and manhood was termed "cnihthade," or knighthood. At fifteen the boy could select his profession, and the girl, at seventeen, could choose a religious life ; after the age of fifteen she might marry whom she pleased. The cleric was the national schoolmaster, and no doubt all youths of a studious bent were placed under his charge. Those who had selected the pursuit of arms were engaged in out-door exercises, of which horsemanship and racing were a principal feature. Other amusements of the age were, dicing, jugglery, glee-singing, dancing, tumbling, bear-baiting, and hunting. Hares, boars, reindeer, and goats were chased by hounds or driven into nets, feathered game was captured with the falcon, net, gin, lime, trap, or by whistling, and the agriculturist found his interests so much injured by the large hunting parties, that he sought and often obtained the royal consent to the exclusion of his lands from sporting trespass. The veneration of the Teuton for woman is strikingly illustrated by the Anglo-Saxon marriage laws. A bridegroom was compelled to produce sureties and a pledge before the marriage ceremony could be legally performed. His morgen gift corresponded with the modern marriage settlement ; and a wife who had brought forth children alive and



survived her husband obtained half his property. It was only in very early ages that the morgen gift reverted to the donor in the event of his wife's sterility. Women both inherited and disposed of property, and appear frequently in Domesday as tenants in capite. A widow was protected by legal penalties, varying in proportion to her rank, from violation or other wrongs.

The food of the period was, as now, a mixture of animal and vegetable diet. Oxen, sheep, swine, fowls, deer, goats, hare, and fish, but principally pork and eels, supplied the former, so that the landed estates were often bounded by eel dykes, and the woods teemed with pigs. Horseflesh, at first used, soon became unfashionable. Barley bread, eaten warm, the dearer loudas of wheat flour, milk, cheese, eggs, and fruit were other portions of diet. Lac acidum, or butter milk, was consumed as a beverage from Hokeday to Michaelmas, and lac dulce, or new milk, from Michaelmas to Martinmas. Salt and honey were greatly valued, the former chiefly as a preservative of the winter's store of meat, the latter as a relish. Salt pans are constantly mentioned in the grants of lands; and some pious donor endowed a monastery with the produce of beans, salt, and honey from certain of his lands. Ale and mead were the most favoured drinks. The first named was of three kinds, the clear, the Welsh, and the mild.

The "ceapealethelum" was the prototype of the modern ale-house, and frequented by all classes save the priest.

The dinner table of the lord's house was often laid with a cloth, and its utensils consisted of a horn, bowl, dish, knife, sometimes a spoon, never a fork. The ladies and gentlemen seated themselves on the rude benches and settles. An attendant, holding the meat on a spit, knelt in turn to each guest, who cut off his portion and deposited it on the dish held by a second person. Dinner ended, the tables were removed, and the drinking continued until evening.

The dress of the lady consisted of coloured tunics, linen web, cuff ribands, covering mantle and jewelled ornaments; and the Saxon terms mantle, kirtle, and gown still survive. There were no attempts to display a fine waist or a white neck. The

pictures of the period represent a long loose robe and sleeves, with a hood or veil wrapped around the neck and breast and falling down in front. The hair was carefully dressed and curled with irons, nor was the rouge-pot unknown thus early. The men wore ornaments round their necks, arms, and fingers, of costlier value than those of the women. Their garments were of silk, linen, and woollen texture. They wore caps or bonnets, close coats, girded round the waist with a belt, breeches which did not cover the knee, flowing cloaks, and leatherne shoes fastened with thongs. Their hair was combed down the sides of the head from a parting in the middle, and, except the clergy, they allowed their beards and moustaches to grow. As a nation they were fond of hot baths, but used cold ones as a penance. They dried themselves with woollen towels.<sup>1</sup>

We must now examine in detail the nicer shades of social and official distinctions. And first, over the precedence due to the different ranks of the aristocracy the inquirer is as much liable to err as is some bungling master of the ceremony over a modern court function.

One historian will divide the Anglo-Saxon nobility into king's thanes and lesser thanes, and another will draw careful distinctions between ethelings, earldormen, eorls, king's thanes, gesiths, and lesser thanes. Some, again, will confuse a man's military or civil title with that allotted to him by society, and introduce further subtle distinctions, many of them synonymous, such as heretoch (hold), gerefa (reeve), knight (~~dux~~), etc., until the student of history is half-inclined to abandon the subject in despair.

It may, however, be taken for granted that in any representative gathering of the kingdom, such as the Witangemote or synod, there would always be, besides the royal Bretwalda, one main distinction between the greater and lesser nobles, whether we choose to denominate the two grades, optimates and proceres, greater barons and lesser barons, or king's thanes and lesser thanes. Earlier in this work we have, for

<sup>1</sup> Compare Sharon Turner, *Anglo-Saxons*, Books vii. and viii., and Hume, *Hist. of Engl.*, App. I.

the sake of simplicity, adopted this last distinction, because thane seems to have been a generic term for a military officer, and to be such presupposes both nobility and land proprietorship. In the Saxon translation of the well-known Parable of the Centurion, this officer is made to style himself a thane : "I am a thane, having thanes under me." In a similar strain it is probable that an etheling, earldorman, or eorl could have said, "I am a king's thane, having thanes under me."

There is the evidence of the wergeld and heriot to enlighten us on the precedence question. A Bretwalda's wergeld was 15,000 thrimas, a thane's 1,200 shillings, a ceorl's 200, and a wealth's 100. The etheling's wergeld was identical with that of a Bretwalda's, and therefore we may conclude the two terms are synonymous. The eorl's heriot was twice that of a thane's, and this decides the question of precedence between these two. The etheling, though socially higher than the earldorman, was probably officially his inferior.

The terms heretoch or hold referred simply to military rank, and that of grefea or reeve to civil rank.

The ceorl who could attain to five hides of land became raised to the grade of thane, and his great-grandchildren became gesithcund. It was even possible for a ceorl to eventually attain eorl's rank.

Last in the social scale was the wealth.<sup>1</sup>

The landed vassalage of the Continental system of beneficia had been, as we have already pointed out, introduced into England under the system of the comitatus. Those who received grants of terra regis became the king's vassals, and those who, by the act of commendation, placed themselves under seignorial protection became their patron's vassals. Such were individuals of the gesith and thane class.<sup>2</sup>

Some of the old agricultural terms date from Saxon times. The word "farm," for example, is possibly derived from the Latin "firma," but more probably (since there were few agri-

<sup>1</sup> The wealth was generally a Briton, whose wergeld was 100 shillings.

<sup>2</sup> Compare Sharon Turner, *Anglo-Saxons*, Bk. VIII. ch. vii. and Stubbs, *Constit. Hist.*, ch. vi.

cultural enclosures in those days) from the Saxon “fearme” or “feorme,” meaning food or provision, and proving the custom of paying the rent in provisions, victuals, or other necessaries of life. The Normans later on distinguished between “ferme” simply and “blanche ferme,” the former signifying that the occupant paid his rent in kind, the latter that he paid it in money.<sup>1</sup> Thus, too, the word “bacon” is derived from “bucon,” the old term for beech-mast, on which the swine fed. But when compared with the numerous instances of Roman surnames having an agricultural origin, the Saxon vocabulary is markedly deficient. The few words that do exist, either as surnames or heraldic emblems, such as the scythe of the Sneyds, the haywain of the Hays, and the dress of the Washbournes probably owe their agricultural origin to some warlike exploit.<sup>2</sup>

And here is again evidence how little natural taste the Anglo-Saxon had for rural pursuits. Hungering to be a landed proprietor, he was utterly destitute of resources to occupy his leisure as such. He was, as we have said before, first a soldier, then a squire. Furthermore, if he neglected his military duties, he ceased to be a landlord. A gesitheund man owning land, who neglected the fyrd, forfeited by King Ina’s laws the very estate which made him a soldier.

It is indeed strange how everything during this period combined to oppose progress in husbandry amongst a race whose property consisted almost entirely of rural possessions.

Besides the troublous and disturbed times, the very laws and customs of the people militated against good husbandry.

The first steps towards a proper system of agriculture were the drainage of morasses, the destruction of wild animals, and the levelling of forests—all of which were forbidden by the forest laws of the time. The monks were the agricultural pioneers of the age.<sup>3</sup> The huge grants of land constantly offered by conscience-haunted kings for the purpose of founding monastic communities, were largely composed of waste and

<sup>1</sup> Rees, *Encyclop.*, sub voc. “Farm.”

<sup>2</sup> Prothero, *Pioneers of English Farming*, p. 14.

<sup>3</sup> Morton, *Cyclo. of Agriculture*, Intro. Essay.

morass, which only the combined science, industry, seclusion, and leisure of their new owners could have converted into fertile tracts; and charters still exist to prove this interesting fact.<sup>1</sup> On the other hand, in the opinion of the Saxon laity, husbandry was a despised science, fit only for serfs and boors. Then again, not only was the external trade of the kingdom, except perhaps in wool, at an end, as we have already had occasion to point out, but the internal trade was restricted by harsh laws, so that no one could buy anything above the value of twenty pennies, save in the presence of a magistrate or two witnesses, and within the walls of a town. Everything sold above that price was subject to a percentage claimed by the king. There were also tolls to pay in the weekly markets or fairs, which were (at first) held on a Sunday. Exchanges of cattle or slaves for other commodities were more often made without the intervention of a money medium, and this practice, perhaps, accounts for the value fixed by law on the commoner commodities. Thus King Ethelred's laws contain the following schedule of prices:—<sup>2</sup>

		£ s. d.
Man	= one pound	2 16 3
Horse	= 80 shillings	" " 1 15 2
Mare or colt	= 20 "	" " 1 8 5
Ass or mule	= 12 "	" " 0 14 1
Ox	= 6 "	" " 0 7 0½
Cow	= 5 "	" " 0 5 6
Swine	= 1 shilling and 3 pennies	" " 0 1 10¼
Sheep	= 1 "	" " 0 1 2
Goat	= 2 pennies	" " 0 0 5½

But these prices were not strictly adhered to. The price of sheep's wool, compared with the carcase, was extremely high, and is accounted for by the supposition that there was a foreign trade in this commodity. From this cause the price of a sheep was widely different just before midsummer and just after the time of shearing. The value of land, as compared with that of cattle or sheep, is another remarkable feature of the times. Thus an acre of land was often sold for the price

<sup>1</sup> Hallam, *Middle Ages*, iii., 265–435, and *Anglo-Saxon Chr.*, A.D. 657.

<sup>2</sup> Craig and McFarlane, *Hist. of Eng.*, Bk. II., ch. iv.

of four sheep. Land, it must be remembered, was plentiful, and the lives of cattle and sheep precarious. The milch cows alone were sheltered during the winter, which, if at all severe, decimated the unprotected and half-starved oxen and calves. The cattle were constantly attended by the neatherd, for fear of robbery and violence; the swine, too, had their attendant, to protect them from wolves and keep them within bounds.<sup>1</sup> The shepherd pitched his fold on the grass lands, and occasionally moved it when the grass within was eaten down. The ewes were milked twice daily, and cows thrice, this latter custom giving the name of trimilchi to the month of May, when the third milking commenced each year.

The national agriculture, speaking generally, consisted in the cultivation of barley and wheat for bread, and the rearing of cattle, sheep, and swine for meat and milk. The orchards (at any rate on monastic lands) afforded figs, grapes, nuts, almonds, and pears. Each village community brewed its own ale and mead, provided its own luxuries, such as fowls, deer, goats, hares, fish, and honey; bred and killed its own beef, mutton, and pork; grew and baked in querns its own flour and barley meal, and manufactured its own linen from flax grown in its own territory.<sup>2</sup>

But few fields or lands were separated by hedges and ditches, save perhaps to partition off the pasturage from the tillage in the common lands, or to enclose small bits of grass close up to or within the villages. As late as the beginning of this century there were districts whose hedges still showed traces of the pastoral or forest state, being apparently of great age, following crooked and irregular lines, and composed of underwood similar in variety to that in the adjoining woodlands, from which they had evidently been collected and afterwards planted along the banks.<sup>3</sup> "Hedge" is no doubt a Saxon word, and equivalent to "hay," another Saxon term. The derivation of both is from the common stem "hæg," an

<sup>1</sup> Craig and McFarlane, *Hist. of Eng.*, Bk. II., ch. iv.

<sup>2</sup> For proof of the utter insulation of each village, *vide* instance of Bampton Village, given in Gomme, *Village Community*, p. 159.

<sup>3</sup> Rees, *Encyclo.*, sub voc. "Fences."

enclosure. The mention of "hayes" in early Anglo-Saxon charters and deeds refers generally to forest enclosures, which were merely game preserves. The most primitive form of early English fence was composed of forked boughs thrust into the ground at those intervals where posts would now be inserted. On the forks, long straight saplings were tied by means of withes, so that all nails and mortices were dispensed with. In other districts the fences were no doubt composed of mud and straw, much the same as a Galloway dyke; or of coarse rubble, like a modern dry stone wall. Even in these primitive days, the principle of emblements was recognised, for the holder of twenty hides of land had to leave twelve sown for his successor.

Horses seem never to have been used in husbandry; but old illustrations show teams of four oxen dragging the plough, and sometimes even eight, the latter probably representing a feudal service to the lord. The rough drawings in the Cotton MS. and the needlework illustrations of the Bayeux tapestry are valuable adjuncts to the written evidence of these times, though the absence of a harrow in the former and the presence of it in the latter should not lead us to draw any erroneous distinctions between Saxon and Norman methods of pulverizing the soil. The representation of rustic labour for each month in the Cotton MSS. is very interesting, and attracts a careful observer's attention to a few peculiarities, such as the plough beetle, still used in Tusser's age; the curious shape of the spade, with its haft and handle at one side, instead of the centre; the reapers working to the accompaniment of music, and under armed surveillance, the harvest, even allowing for the subsequent alteration of the calendar, commencing so early as June; the absence of any intermediate stage between cutting and carting; the felling of timber in July, while the sap is running strongly; the use of handcarts in preference to those drawn by oxen; and the pruning of fruit trees and possibly vines. But we cannot rely on the accuracy of such rude scribblings, nor can any practical conclusions be drawn from them.

## Anglo-Saxon Period.

449–1066.

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### CHAPTER IX.

#### THE LAND IN ITS CONNECTION WITH CHURCH AND STATE.

It is clear from what has been already said, that the Saxon Polity was utterly unsuited to the cultivation of commerce, agriculture, or fine arts, though Camden quotes the eulogistic lines of a German poet in proof of the contrary.<sup>1</sup> If this bard did not sing falsely, the Continent of Europe must have been in worse plight still, since Britain is represented as spreading religion and the arts of peace amongst the neighbouring nations. It was not, however, till the reign of Edward the Confessor that the country began to take breath again and recover some of the lost advantages of civilization which she had enjoyed in Roman days.

We can then only reconcile the German poet's views with what we know was taking place in England during the stormy era of the Heptarchy by looking forward to some fresh and foreign influence which could have tamed and civilized the wild peoples now occupying England. And sure enough a peaceful invasion did at this time occur which vastly affected for the better the laws and manners of the times.

This was the conversion of the people to Christianity. The Faith had already obtained a footing in this country during Roman times, perhaps even before, through the trade intercourse between southern France and western Britain, which had brought the respective peoples into friendly contact.

<sup>1</sup> *Vide Camden, Britannia.*

Aaron and Julius had been martyred for their belief about A.D. 300 ; representatives from the three Roman-divided provinces of *Maxima Cæsarensis*, *Britannia Prima*, and *Britannia Secunda* had taken part in the French Council of Arles, A.D. 314, and the religion still held ground in Cumberland, Wales, Devon, and Cornwall, even in these turbulent days of the Saxon invasion. But in the year 597 A.D. the Roman mission headed by St. Augustine landed on Kentish shores. Ethelbert, the most important of the Saxon chiefs, was converted, and the first bishops of London and Rochester were consecrated in 604 A.D. This religious expedition from Rome had as beneficial effects on the native manners and customs of Great Britain as any of its warlike precursors. The doctrines of the new faith gradually but surely tamed the savage Saxon blood, which, true to the tribal instincts of race, was constantly boiling up into internecine warfare betwixt the various princes of the Heptarchy. At last, Egbert, king of the West Saxons, obtained the mastery ; and the new-formed monarchy was able to direct its undivided opposition to the Danish invasion. But this fresh disturbance tended to prolong a condition of savagery which would otherwise have yielded far sooner to the soothing influences of the foreign Christians ; and, as we have already said, it was not till the reign of the Confessor that the country settled down into a peaceful condition.

But from the outset Church and State were so closely connected that it is difficult at first sight to distinguish between the edict of a *Witangemote* and the canon of a Synod. We have already stated that the Church's dignitaries possessed, *ex-officio*, seats in the former, and that her abbots owned large allodial properties, which, like other king's Thanes, entitled them to preside over their own courts, from whose judgments there was no appeal, and whose jurisdiction extended even over the life or death of all connected with the property. At first the moneys needed for the erection and repairs of churches, the endowment of bishoprics, the maintenance of the clergy, and the support of the poor, had been collected from voluntary donors. The free gifts and donations of an earlier period gradually grew into a more or less compulsory charge under

the name of tithes.<sup>1</sup> Lord Selborne considers that the first canon relating to this payment was that enacted at Rouen A.D. 630, and that the first law was the celebrated ordinance of the eleventh year of Charlemagne's reign. A large amount of ambiguity however surrounds the exact period when this Continental practice came to be general in our country. The discipline of the Church abroad, with its methodical quadripartite distribution of *prædial*, mixed, and personal tithes, was as distasteful to disorderly Bersaker landowners as were foreign feudal customs.

When, therefore, St. Augustine sought his superior's instructions, the Bishop of Rome merely cited the Continental custom of tithe distribution, and left a wise freedom of action to the discretion of his lieutenant.<sup>2</sup>

That the bishops of the Heptarchy received tithe as early as the eighth century, is evident from allusions to the custom by Boniface, archbishop of Mentz, in his letter to Cuthbert, archbishop of Canterbury, and from the remark in one of Beda's latest letters, that "there is no village in the remotest parts of Northumbria which could escape the payment of tribute to the Bishop."<sup>3</sup> And here it may be as well to examine the Latin nomenclature of the old laws, canons, and charters, with a view to deciding once for all where tithes and where some other church due is intended. In this particular instance the word used by Beda is "tributum," which, as a generic term, covering all Church offerings, eleemosynary and compulsory, may and probably does include the specific due of "decimæ." To be strictly accurate, the word "decimæ," i.e., tithes, is not used in either St. Augustine's message to Pope Gregory or in the latter's reply. "De his quæ fidelium oblationibus accedunt altari, quantæ debeant fieri portiones?" asks Augustine, and the same word ("portionibus") is used in the Pontiff's answer. Then again, "decimam terræ suæ," "decimam mansionem," "decimam omnium hidarum," "decimam

<sup>1</sup> *Ancient Facts and Fictions concerning Churches and Tithes*, p. 49, ed. I.

<sup>2</sup> Lord Selborne, *Anc. Facts and Fictions*, p. 104, ed. I.

<sup>3</sup> Lingard, *Anglo-Saxon Church*, vol. i. p. 108.

"regni sui partem," and "decimavit totum regni sui imperium," phrases used by different historians to record Ethelwulf's magnificent Church offering, do not, as we shall shortly show, imply the gift of "decimæ."

The next trustworthy evidence regarding tithe is that in A.D. 786, when a foreign mission stirred up King Offa to convoke a synod in order to reform the Church laws in the same kingdom, out of which the principle of the payment became part of the new canon.<sup>1</sup> There is however no trustworthy evidence for any legally established custom of tithe payment beyond the area of lands comprised in the royal demesnes. Offa, possibly urged thereto in expiation for Ethelbert's murder, seems to have paid besides tithe something for papal support—possibly the impost known under the name of Rome feoh or Peter's pence;<sup>2</sup> but it would not be safe to infer that there was any secular co-operation in these ecclesiastical charges enacted in full synod of the lords spiritual of the realm thus convoked by Pope Adrian's legate. When we come to the year A.D. 855, there are more conflicting views. Dean Prideaux asserts that Ethelwulf, king of the West Saxons, in full Parliament at Winchester, dedicated one-tenth of his kingdom to God. Dean Hook explains that he offered only the predial tithes of those lands over which he had proprietary control; and Sir Henry Spelman concludes that the origin of the Church glebe lands dates from this Charter. There are objections to the conclusions of all three theorists. Thus, if Dean Prideaux be correct, where is there any proof that the terms of the grant were carried out? Against Dean Hook's suggestion there is the improbability that Ethelwulf would require the consent of all his landowning subjects to an offering that was purely personal. Lastly, the objection to Sir Henry Spelman's theory is the fact that the glebe lands were already in existence at the time of Ethelwulf's Charter.

The Rev. H. Clarke has recently collated the phrases used in recording this event by no less than seven historians. That of Ingulphus, "tunc primo cum decimis omnium terrarum ac

<sup>1</sup> This was the Council of Chalchyth.

<sup>2</sup> *Ancient Facts and Fictions*, p. 150, ed. I.

bonorum aliorum sive catallorum universam dotaverit ecclesi-  
am Anglicanam," alone implies the tithe offerings. All the  
other six signify in unmistakable language the separation of a  
tenth of the land itself for the Church's benefit. To cor-  
roborate the accuracy of the majority, the wording of the  
Charter itself is "decimam mansionem," i.e., the tenth hide.  
Possessed of these data, it is open for every reader to make his  
own exegesis.

Coming now to the laws of Ethelwulf's son Alfred, we must  
be careful not to confuse the scriptural preface with the Acts  
that follow it. By doing this we shall have to decide that in  
the laws proper no allusion to tithe occurs. Between the  
Council of Chelsea, A.D. 787, and the treaty between Alfred's  
son Edward and the Danish sovereign Guthrum II., there is  
no historical allusion to tithes, a circumstance which, consider-  
ing the disordered condition of the entire kingdom throughout  
this interval, need cause us no wonder. By the treaty be-  
tween the two kings, the produce of both nationalities was  
rendered liable for tithe; penalty clauses more severe on the  
English than on the Danes, proving the compulsory nature of  
the due. Later on, Athelstan sends forth a royal edict that  
"his Reves shall pay out of his own lands just and due tithes,  
as well of all cattel as of the annual products of the ground,  
and that all his Bishops, Earls, and Reves should do likewise  
out of their lands."<sup>1</sup> Edmund summons a synod which enacts  
a canon compelling every Christian on pain of excommunica-  
tion to religiously pay his tithes, Cyriesceat and "Plow Alms."  
Edgar, seeking a remedy against a prevailing pestilence, con-  
venes his Witan, which finds that it has been caused by the  
diminution in the returns from the "need gafol" (i.e. necessary  
tax) which men ought to render God in their tithes; and here,  
let us observe, is the first instance of a coercive measure, which  
either created a legal title to tithes or enforced their cus-  
tomary payment.<sup>2</sup> It was the period of the Parish movement,

<sup>1</sup> *Vide Rev. J. Morris Fuller, Our Title Deeds*, p. 58; *Ld. Selborne, Anc. Facts and Fictions*, p. 200, ed. I.; and *Rev. H. W. Clarke, A History of Tithes*, p. 54.

<sup>2</sup> *Morris Fuller, Our Title Deeds*, p. 74.

originated by the inconvenience experienced by great seigniorial owners in having to travel long distances to the nearest minister church. The lords of manors had begun to divert the tithes which they had been paying for the support of the great monasteries and collegiate churches to the costs of erection and maintenance of local chapels on their own lands; and King Edgar's laws gave legal sanction to the practice, but at the same time regulated and apportioned the distribution of the funds derived from this source. Thus, if the tithe-payer had no chapel of his own he was not allowed to withhold any portion of this due from the mother Church. If he possessed a private chapel but no graveyard, he might appropriate one-tenth towards its expenses; and in the event of his having provided both church and yard he was allowed to retain as much as one-third.<sup>1</sup> Any violation of these regulations enabled the king's reve, bishop of the diocese, and minister of the parish to levy a distress, the proceeds of which was distributed one-tenth to the Church, four-tenths to the lord of the manor, four-tenths to the bishop, and the remaining tenth to the owner. This law was re-enacted in the reigns of Ethelred and Canute, with additional penalties. At first these rural churches were mere wooden chapels dependent upon the mother Church and served by itinerant ministers who gradually acquired the privileges to baptize and bury and eventually became resident.

Such is briefly the history of the tithe in the England of Anglo-Saxon times. Whether this charge on the land's produce was enforced with pains and penalties on owners of real property by the civil laws of the Witan, or whether it was binding on men's consciences by the ecclesiastical canons of the synods, or even whether it was merely a custom amongst the devout, urged thereto by royal example, and coming under the category of what is called in the Roman theology "the counsel of perfection" it is not here our purpose to inquire. As landowner after landowner charged his estates with a tithe of their produce the practice widened, and as property became hereditary the lands descended from father to son subject to this burden, and it matters little to a history of the landed interest how

<sup>1</sup> *Id., Ibid.*

soon they changed from a gospel oblation to a legal due. There is however one main distinction in all the so-called Anglo-Saxon laws relating to ecclesiastical imposts and those relating to secular taxation. Attached to the former we rarely, at any rate in the earlier records, find penalty clauses, which, on the other hand, are a marked feature of the latter. This is of course the battle-ground of the Liberationist and Churchman ; and though if we held a brief at all, it would be for the latter, we cannot help pointing out that neither side has quite recognised the importance which the Anglo-Saxon system of land tenure bears in the dispute. Owners of landed property, we have remarked, made over as tithe offerings the tenth of their produce. Such gifts however would be limited to the demesne lands. There would have to be some special understanding between lord and gebur over the common arable ground before the produce of every tenth plough land could be dedicated as tithes. The landlord would have to consent to forfeit his claim to the boon and weekly services of its cultivators, and they would have to forego the fruits of their industry in farming it. As soon then as every fresh district taken from the waste came to bear crops the question of tithe would ensue. With regard to the waste proper, it was the old Roman scriptura arrangement over again, only under the new name of mixed tithe. Thus, except with the tithe from the thane's inland, it was not so much the lord as the people who were concerned. That therefore on the common arable ground would be dedicated, if dedicated at all, by the community, and not by this or that individual, a circumstance which rather points to some form of compulsory taxation than to the free nature of this offering for which the champion of Church interests contends. Thus, in the ordinance of King Edgar tithe is to be paid both from a thane's inland and from geneat land so far as the plough traverses it.

Important though the history of the tithe undoubtedly is, there is another aspect of it, viz. the legal, and this we shall now examine. When a landed proprietor dedicated one-tenth of his produce to the Church, he made no provision for the variations brought about by time in agriculture and land

tenure, nor did he foresee the necessity that would arise of a redistribution of its proceeds in some other manner than what he originally intended. How far the State has powers of interference is still a fiercely contested point, but that her intervention has been an absolute necessity over and over again, no one we think would care to dispute. What, it may be asked, were the intentions of the original benefactors in devoting one-tenth of their substance in this manner? Clearly the maintenance and support of a religious community holding certain doctrines as to the Christian religion. But in those early times this religious community included the whole nation; the Church and State were different aspects of the same corporation. Gradually, however, large masses of the nation renounced the Church's teaching and tenets, and enrolled themselves into various sects. A recent attempt has been made to stretch the term "National Church" into covering the whole mass of the religious sects. Therefrom a claim is set up to a partition of this portion of the original Church's endowments amongst all the denominations of Christians who belong to this country; as though the original donors of tithe had dedicated their wealth to the National Church *per se*, and not to the National Church because it upheld their particular views of Christianity. On the other hand, it seems equally absurd for the ecclesiastical party to resent State interference as a violation of private and vested interests. Where would the Church's property have been now without that interference? It was the action of the State that prevented seigniorial spoliation in the early days of the parish movement. It was the action of the State that regulated and perpetuated the various modes in which produce was titheable. It was the State that secured to the Church by 2 and 3 Ed. VI., c. 13, § 5, her tithe dues on barren and waste lands after being brought into cultivation. It was the State again which awarded, by means of the 18th and 19th century Inclosure Acts, the lands and corn rents in lieu of tithes; and it was not through her fault that Henry VIII. robbed the Church and poor of their dues at the Reformation. It was she who upheld tithe payments in the times of Cromwell, when the

Nonconformist was almost omnipotent; and again, in the days of James II., when Romanism was once more to the fore. Surely therefore the tithe rent charge is something more than private, though something less than public property, the incidence of which is alterable by the State, as altered it was in 967, 1836, and 1891, but the existence of which the State has ever upheld. The State therefore, in its position to the tithe, is a trustee, but a trustee bound by no laws save those of her own making. If therefore she chose to provide a substitute for the present tithe payment, just as she might choose to formulate a scheme of national insurance in substitution of the present poor laws, so long as she supplied the National Church with an equivalent income from other sources, there seems to be no occasion for an outcry on the part of those to whom the present tithe-charge is now payable.

We have said that the intentions of the original tithe donor were to support the Establishment known as the English Church; but the distribution of his offering both here and on the Continent was carefully defined from the very outset. It is a disputed point whether the quadripartite, or even the tripartite distribution ever obtained a foothold in this country. For the researches of Lord Selborne have in every impartial mind fully established that there is no really reliable evidence on the subject in all the Anglo-Saxon literature. There are, it is true, allusions to tithe partition, but all of a doubtful nature. There are first of all the suggestions contained in Pope Gregory's reply to St. Augustine; there is the clause in the Church Grith Law at the end of the reign of Ethelred the Unready, and there are the allusions in certain canons of the English Episcopate. But Lord Selborne refuses to believe that, even after granting the Church Grith Law of 1014 to be genuine, it was ever carried out, since there was no confirmation of it by Canute, who succeeded Ethelred the following year. It was therefore no more likely to have established compulsory tripartite distribution in this country than that earlier suggestion of Pope Gregory's. The third source of evidence, viz., the references contained in the canonical laws, has been traced by this same author to one original source, viz., the *Capitulare Episcoporum*.

The allusions to a tripartite distribution in the so-called excretions of Egbert, and in the canons of Theodore and Aelfric, are in language so similar to those in certain MSS. of Metz and Andain as to have led Lord Selborne to conclude that they must have been extracted bodily from these older documents, which, in their turn, probably owe their origin to some earlier copy of the *Capitulare Episcoporum*.<sup>1</sup> Now what gives colour to this suggestion is the fact that the clergy in England were gradually dividing into two great bodies, viz. the monastic and the secular. The former were ardent supporters of a continental polity in religious matters, while the latter were becoming every day more national and insular. Here were the germs of that difference in taste and character which eventually culminated in open schism at the Reformation. We may therefore conclude that the practice of quadripartite or tripartite distribution was attempted in England, though possibly relinquished as impracticable amidst a people so wild and stubborn as the Anglo-Saxons. It seems however that in a more or less modified form something of the kind would become a necessity on the introduction of the parochial system, and we see traces of this both in the laws of King Edgar, and later on in the frequent State intervention over matters of monastic poor relief, about which we shall have something to say in its proper place. The parochial system initiated a new departure in the division of the counties, which, as we have already stated, had been parcelled out by early Anglo-Saxon kings into hundreds and tithings. The parish, consisting either of a township or a group of townships, became for most purposes the substitute for the hundred,

<sup>1</sup> Briefly stated, Lord Selborne's conclusions are, that the excretions of Egbert could not have been compiled before the 11th century, and were not possibly the work of Egbert, who died A.D. 766, but were traceable to the sacerdotal laws of Andain; (2) that the so-called canons of Theodore were not a translation of those of the Nicene Council, but patched-up rules of a Benedictine source for the use of priests; (3) that the *Capitulare Episcoporum* is the fountain head of the canons of Aelfric. *Vide* Selborne, *Anc. Facts and Fictions*, ch. vii., viii., Ed. I.; M. Fuller, *Our Title Deeds*, p. 118; Rev. H. Clarke, *A History of Tithes*; and Selborne, *Anc. Facts and Fictions*, ed. II., Supplement.

just as the older dioceses had, at an earlier date, replaced the kingdoms of the Heptarchy.

At any rate, for all administrative measures, relating to Church dues, the ecclesiastical land divisions would supersede the civil. Add to this consideration the fact that the central authority of each ecclesiastical district was entirely in the hands of the monastic clergy, and we may conclude that the distribution of those tithe dues which passed through their hands was, as far as possible, carried out on the lines of the Continental polity. Later on, when we come to examine the provisions for the maintenance of the national poor, we shall find that its relief throughout the Middle Ages was compulsory on the monastic clergy. From these circumstances it may be fairly concluded that a large portion of the tithes were, during a period difficult to define, disposed of in the support of the nation's clergy, in the maintenance of its churches, and in the relief of its poverty; and this, in other words, is the tripartite distribution which we have already shown to have been prevalent abroad.<sup>1</sup>

If more or less strict rules encompassed the disposal of the tithe we may be sure that its sources were jealously watched and systematically regulated. There were in fact three main distinctions in the various tithes, known respectively as "predial," "mixed," and "personal"; the first of which arose from the produce of the earth, such as corn, hay, hemp, hops, fruit, seeds and herbs; the second of which arose from beasts and fowls fed on such produce, and the third from earnings and profits of individuals. The two first-named were also known as "tithes de jure," and included all fruits of the earth renewable annually, and the last-named as "tithes by custom." The produce of a mine, houses, etc., not being fruits of the earth renewable annually, were excluded as well as the daily work of the common labourer. It would be almost impossible to enumerate all the things which were liable to predial tithes, and it would be

<sup>1</sup> The quadripartite distribution included the maintenance of the Episcopal Sees, but as soon as these became self-supporting by means of endowments from other sources the tripartite distribution would take the place of the earlier system.

tedious to make mention even of those about which question has arisen some time or other in the tithes' history. Acorns, mast of oak and beech, nurseries of trees, hazel, holly and maples, although of twenty years' growth, were titheable; whereas oaks and the bark of titheable timber were exempted. Parks, whether pastured by deer or converted into tillage, were titheable by custom, but fallow ground escaped either form of this impost. Another minor distinction in this due was made by the terms great and small tithes, which came into existence with the parish system. The former comprised corn, hay, and wood, and generally belonged to the rector; the latter included all other forms of predial tithe, and belonged to the vicar. Lastly, extra-parochial tithes, which did not lie in any parish, were the property of the sovereign.<sup>1</sup>

But enough has been said to prove how absolutely essential were the services of the national statute book for the proper administration of justice between tithe owner and tithe payer. It is to be regretted that instead of this heavy charge on the nation's produce a tenth of the land, as in Ethelwulf's charter, had not been originally entirely devoted to the Church, for since the abolition of the Corn Laws, the British farmer has had to compete with the foreign producer in the home market on unequal terms; his circumstances on this account being parallel to the case of a pedestrian who is penalised ten yards in every hundred, whenever he competes in a trial of speed with other runners.

However closely the national legislation guarded the tithe owner's interests, it seems to have been impossible for it to have provided against the evasion of the payment of personal tithes. Their distinctive name of "tithes due by custom" in opposition to those due "de jure" shows this: The profits from commerce and trade were insignificant in these early times; they varied with each individual, and terminated at his death. If therefore predial and mixed tithes were difficult to collect, how much more personal tithes! Hence we find very little allusion to personal tithe in the records of this era. The Constitution of Archbishop Winchelsey appears to

<sup>1</sup> Jacobs, *Law Dictionary*, sub. voc. Tithes.

be the first definite attempt to regulate the custom, while the Statute of 2 and 3 Ed. VI. limits its range and power; and the survival up to the present day of a few grants made from time to time of "things not titheable at common law"<sup>1</sup> demonstrates its existence. An examination of this particular impost does not by any means exhaust the sum of ecclesiastical dues derivable from the land or the land's produce.

There were the Church estates, generally consisting of one manse or hide in extent, which formed the glebe of the rural clergy; and there were the voluntary offerings, but about these we need not trouble. Besides tithes, however, there were certain other dues more or less compulsory, such as the Cyriesceat, or Church schot, Peter's pence, the Plough alms, Leoh schot, and Soul schot. The first of these obtained the earliest protection of the Legislature. It was mostly paid in kind, and consisted of a "seame" or horse-load of winnowed grass, sometimes also poultry, paid at Martinmas on every hide occupied by a free tenant.<sup>2</sup> From this duty the religious often purchased an exemption for themselves and their tenants. That it was compulsory there can be no doubt, for in the fourth law of King Ina's code, it is enacted that "If any do not pay this due, let him forfeit sixty shillings and render the Church schot twelvefold," which penalty continued till after the Conquest.

Peter's pence was an institution of King Ina or King Offa, and was a charge of one penny upon every household in the kingdom, except the most destitute, for the purposes of supporting an English college at Rome. The vicissitudes of this charge mark the ebb and flow of Romanist tendencies up to Stuart times, it having been prohibited by Edward III., revived by Philip and Mary, and wholly abrogated by Elizabeth.<sup>3</sup>

<sup>1</sup> Fuller, *Our Title Deeds*, p. 250.

<sup>2</sup> Lingard, *Sources of Revenue, Hist. and Antiquities of Anglo-Saxon Church*; also Selborne, *Facts and Fictions*, p. 181, ed. I.; and Jacobs, *Law Dict.*, sub. voc. Church Schot.

<sup>3</sup> Jacob's *Dict.*, sub. voc. Peter's Pence; also Fuller, *Our Title Deeds*, pp. 52, 82.

The plough alms were one penny due to the Church for every ploughland, and payable within fifteen days after Easter. These three charges are easily distinguishable. The tithe, Cyriesceat, and "plow" alms are all mentioned in King Edmund's laws. Canute defines the Cyriesceat as the firstfruit of the seed, payable in the middle of August, and increases the penalty for its evasion to 120 shillings. By the same law we find that Peter's pence was a charge levied on the whole country, cities as well as villages.<sup>1</sup>

Leoh schot was wax of the value of a silver halfpenny, chargeable on every hide of land thrice yearly, i.e. at Candlemas, Easter eve, and on the Feast of All Hallows, for the purpose of furnishing lights for the altar at the parish church.<sup>2</sup>

Lastly, there was the soul schot, or customary burial fee, payable to the minister for the dead while the grave was yet open, or reserved for the church to which the deceased belonged, whenever the burial took place outside his shrift-shire. Selden supposes that it was a satisfaction for some negligence and omission that the defunct might have been guilty of in not paying his personal tithes.<sup>3</sup>

Let us now turn to the relationship of the land with the State. Just as the Church had looked to the land for the maintenance of the national Clergy, Poor, and Houses of Worship, so also the State looked to the land for the maintenance of the national defences. Practically, in these early times, there was little prospect for fiscal officers to find the necessary funds elsewhere. Commercial capital was a mere cipher in the national wealth. Its compulsory taxation was quite beyond the rude machinery employed by the Anglo-Saxon civil service. The creed of the political economist, partly from necessity, partly also from predilection, remained identically the same until the times of Adam Smith; English finance ministers held views associated with that French school of political economists which flourished towards the close of the 18th century. The

<sup>1</sup> Id. *Ibid.*

<sup>2</sup> Id. *Ibid.*

<sup>3</sup> Selborne, *Facts and Fictions*, pp. 223-47, ed. I.; and Lingard, *Anglo-Saxon Church*.

fundamental principle of its leaders was, that all profits being originally drawn from the soil, so too should all taxation be. So strongly rooted was this conception, that not even the publication and subsequent popularity of Adam Smith's *Wealth of Nations* seems to have dissipated the erroneous doctrine, or at any rate led to practical results. Perhaps there is no more convincing proof that Roman municipal and commercial principles were by no means obliterated by Saxon ignorance and rusticity than that they eventually grew into such a power in the country as to threaten the existence of any Government, however strong, that ventured to interfere with their interests. Statesmen even now cannot and dare not call upon commercial capital to bear its proper share in the national taxation ; and so the statistical columns of our inland revenue sheets continue to be made up principally of items extorted from the landed interest, as though the economical table of Quesnai and the writings of Mirabeau and Turgot were still the textbooks of our chancellors of exchequer.

No wonder then that in these primitive times Danegeld was a land tax, that every five hides of ground had to furnish its armed unit to the national host ; that the soil supplied the requisites for road and bridge repairs, and that its occupiers produced the funds necessary for the national fortresses.

It is clear that for these purposes, the last three of which are better known under the name of Trinoda Necessitas, some rough estimate of the country's area would be required ; and so even in Heptarchical days the land had been measured and its area computed in hides. Without entering into a discussion of the particular area known as the hide, which is best dealt with when we come to compare it with the carucate, it may be mentioned that it comprised as much land as a man and team could plough in a year.

Camden in his *Britannia* has given a table containing the separate areas of the counties below the Humber as they were divided in these times, which we subjoin.

Myrcena ...	...	30,000 hides	Pecsetna ...	...	1,200 hides
Wokensemna	...	7,000 "	Elmedsetna	...	600 "
Westerna ...	...	7,000 "	Lindes farona	...	7,000 "

Suth Gyrwa	...	600 hides	Hendrica ...	...	8,000 hides
North Gyrwa	...	600 "	Vnecungga	...	1,200 "
East Wixna	...	900 "	Aroseatna...	...	600 "
West Wixna	...	600 "	Fearfinga ...	...	300 "
Spalda	...	600 "	Belmiga ...	...	600 "
Wigesta	...	900 "	Witherigga	...	600 "
Herefinna...	...	1,200 "	Eastwillia ...	...	600 "
Sweedora	...	300 "	Westwillia	...	600 "
Eyfla	...	300 "	East Engle	...	30,000 "
Wicca	...	300 "	East Sexena	...	7,000 "
Wightgora	...	600 "	Cantwarena	...	15,000 "
Noxgaga	...	5,000 "	Suthsexena	...	7,000 "
Ohtgaga	...	2,000 "	Westsexena	...	100,000 "
Hynca	...	7,000 "			
Celtern-setna	...	4,000 "	Total	248,600	"

The total area shows the available forces of the kingdom to have been 48,720 men. But by far the most interesting feature of this early record is its accuracy, for although the hide as a unit of measurement was an unknown and varying factor, about which we shall have much to say later on, we may take it at this early period as implying from one hundred to one hundred and fifty acres.<sup>1</sup>

Assuming then its area to be one hundred and forty acres, and bearing in mind that even the acre varied in different parts of the country up to Angevin times, we obtain a total area which, if added to what is now known to be the extent of country north of the Humber, comes very close (almost too close) to the 37,000,000 acres, which is our modern computation of the country's contents.<sup>2</sup>

<sup>1</sup> An acre of land in Anglo-Saxon times cost about one shilling, and a hide 100 shillings; but this does not imply that a hide was 100 acres, but that the area of land ploughable in a day was worth one shilling, and that ploughable in a year 100 shillings.—*Chron. Preciosum*, p. 64.

<sup>2</sup> The so-called discovery (alluded to on page 91 in the Rev. W. Clarke's *History of Tithes*) by Mr. Walter de Gray Birch, of the MSS. Department, British Museum, in 1883, of a MS. in Anglo-Saxon of the late 10th or early 11th century, containing the same area and divisions as those used in Camden's History and believed to be a copy of some older MS., accentuates the importance of this old Survey. Hume uses the same figures as Camden, but Brady gives the area of England as 274,950 hides. Compare Hume's *History of England*, app. 1, and Brady, *History of England*, i., p. 270.

It seems almost incredible that the Anglo-Saxon surveyors could have possessed the technical skill sufficient for accurately estimating huge forests and vast swamps, a task which would puzzle even our Royal Engineers of the Victorian age. It seems (we cannot say more likely, but) less improbable, that the Roman agrimensores had left some records behind to which the Anglo-Saxon surveyors had access. How even Roman ingenuity could compass so difficult a task is a mystery. Nor would the undertaking effect any practical results, for neither Roman nor Anglo-Saxon fiscal systems were based upon foundations which required the areas of uninhabited wastes.<sup>1</sup>

Shadowy though the inference of Roman handiwork is in this matter, it is interesting to imagine that this survey, which probably formed the framework for all future records, thus connects the Roman land surveyor with that great national terrier, the Domesday Book of a later era.

<sup>1</sup> It is absurd to suppose that there were 243,600 hides of cultivated land at this period, and we can hardly believe that every five hides of uncultivated land would have to furnish its armed unit to the national defence. On the other hand 48,720 men is a total quite reconcilable with the numbers often engaged in warfare in various parts of the country at the same time. The problem is one more suitable for a Constitutional History than ours, and we shall therefore leave its solution to other brains. Theorists have evaded, not solved, the difficulty by identifying the term "hide" with "family," and estimating the population of England at this time at 1,218,000 souls, or 243,600 families, each averaging five persons.

## The Middle Ages.—The Norman Conquest.

A.D. 1066.

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### CHAPTER X.

#### DISTINCTIONS BETWEEN CONQUEROR AND CONQUERED.

AGAIN the terminology changes. The village community has become a barony, its lord a tenant-in-chief, and his vassals and villains are soon to be known as freeholders and copyholders. Feudalism grasps all England in its iron fingers, and the pitiless accuracy of Domesday Book leaves no loophole of escape. The conqueror flings his sword, like Brennus, into the scales of justice, and claims seigniorial rights over every acre of English ground as his share of the spoil. Those of the conquered in whom yet lingers a spark of the old Bersaker or Viking fire fly as outlaws to the woods, and each peaceful householder on their outskirts nightly barricades his doors and windows, and goes to bed in direful doubt whether he shall ever see again the morning's sun.

The race enmity exceeds imagination, and has seldom been surpassed. The most insulting and degrading of modern aristocratic phrases<sup>1</sup>—“ You're a cad, sir ” may be paraphrased in Norman lips by “ Fellow, you're an Englishman ! ” And this is the more remarkable when we trace back the ethnology of both conqueror and conquered to identical sources. Julius Cæsar had converted Transalpine Gaul as well as Britain into a Roman province. The Franks, a race of Germans, and the Angles, Jutes, and Saxons, also races of Germans, had occupied the two countries. The conquering Northmen of

<sup>1</sup> *Vide Macaulay, History of England.*

Scandinavia and Denmark had blended their blood with that of Normandy as well as Britain. Nor were the earlier customs and habits of the two peoples dissimilar. Whether we look back on the methods of annually dividing their landed property resorted to by Frankish as well as Frisian communities amidst the woods and wilds of Germany, and the reluctant and circumscribed supremacy allowed to their chiefs, or study the Teutonic idiosyncrasy which stamped itself into the fresh polity both of the Frankish and Anglo-Saxon conquerors in each of their new territories, we find a strong family resemblance in the two nations.

There were, however, one or two distinguishing features, results rather of accident than ethnic character, which may account for much of the political, if not social, differences between these two branches of the Teutonic stem when once more they re-unite on English soil.

In the first place, as the individual's liability to molestation on the Continent was greater than in England, so in proportion was the process of converting allodial into feudal tenures speedier there than here.

In the second place, the insular position of the Anglo-Saxons had kept them almost free from outside influences. Hitherto the Teutonic element on English soil had only come into touch with that of the Roman at second hand. Whatever of the Latin polity had been imbibed had penetrated through two channels, viz. the Britons and the Church.

On the other hand, the Norman with his feudalism represented the results of direct contact. The customs of the old Teutonic Mark had by now become fused with those of the older Roman militarism. That the process, though started about the same period, had progressed less rapidly in England, was owing to the less intimate relationship between Saxon and Roman which the presence of these intermediaries had caused.

Let us then turn once more to the Roman era, and pick up those similarities for which, during an examination of the Teutonic economy, we could have found no parallel.

The Romans as conquerors had initiated that system of the

colonia which had first associated landownership with military service, and when the barbarians in their turn conquered the Romans, they adopted the idea of the Lætic land tenure, henceforth remunerating the soldier with portions of the subjected territories. A soldier by profession, the Germanic landlord looked for the profits of his lands to the military vassalage of his tenantry. He, so to speak, split up his seigniorial rights into two parts, viz. ownership and enjoyment. The first he retained, and the last he made over to the vassal. In so doing he either consciously or unconsciously plagiarised the Emphyteutic system of the old Roman conveyancing lawyer—to which, however, he tacked on the formalities of the oaths of fealty as a picturesque proof of his retention of the dominium. Even the homage of the vassal, that mutual compact—whereby the superior placed himself under an obligation to protect, clothe, and feed for life his inferior, in exchange for all services summed up in the phrase “to become so-and-so’s man,”—was as much a Roman idea as it was Teutonic, and who is to decide that the position of the cliens did not originally inspire some village statesman of Germania with the idea of this custom?

The method by which the Romans distributed the lands of a colony amongst its veterans has been fully described by Mr. Coote, whose study of the writings of the Roman agrimensores has been profound.<sup>1</sup> These prototypes of the modern surveyor measured out the ground into rectangular blocks of approximately equal size. Beyond these rectangular plots were irregular patches fit for cultivation, which were leased by the State to farmers, and termed terra vectigalis. Again we ask, who can with confidence deny that the furlongs and acres of the common field system do not derive their origin from this Roman custom? This would further imply that the agricultural system of the later Mark was itself a fusion of Roman with Teutonic processes.<sup>2</sup>

It soon came about in these Roman colonies and other districts of the Empire, that landed proprietors, both individuals

<sup>1</sup> Coote, *Romans in Britain, passim.*

<sup>2</sup> *Encyclo. Brit.*, 9th Ed., *sub. voc.* Justinian; *vide note on Emphyteusis.*

and communities, were often anxious to bring into cultivation large tracts of unprofitable land, over which they could not themselves afford time for supervision or capital for cultivation. These they granted to farmers, who enjoyed fixity of tenure so long as they paid their "pensio" or annual rent. The new tenant could assign or mortgage his property, and at his death the estate passed into the hands of his heirs. He was, as it were, an extra owner grafted on to the dominium. Save that he had to pay a rent, and could not alienate without the consent of his lord, it would be difficult to distinguish his proprietary rights from actual ownership. This then was the famous Emphyteusis system,<sup>1</sup> which, as its name implies, was an innovation of the Eastern Empire, not appearing in the pages of legal codes until its constitution was settled by Justinian about the beginning of the sixth century.

There does not seem much difference between the Emphyteuta and the Vavasour or mesne lord of the feudal system. There is in fact no reason why subinfeudation, copyhold tenures, and chief rents may not have subsequently been evolved from this older Roman institution.

We must not overlook the influence of the Church in a question of this kind. She was the intermediary throughout Europe between the dead past of the Roman polity and the living entity of feudalism. The Emphyteusis system was at first the monopoly of the emperors; then the agri vectigales of the municipia were allowed to come under this arrangement; and afterwards private owners were permitted to follow the custom. The Church at an early date took up the system in dealing with its territorial possessions, and to her agency we may reasonably ascribe the transmission of the process to feudalism.

But the Roman element in the fresh invaders' constitutional system, though exceedingly interesting and important to our History of the English Landed Interest, does not account for

Palgrave derives the term Feud from an abbreviation of Emphyteusis, pronounced Emphytefsis, then Phitef, Fitef, Fief, and Feud.—*Rise and Progress of the English Commonwealth*, p. ccv., and *History of Anglo-Saxons*, p. 259.

the animosity and differences of tastes between the two nationalities, which are the subjects of this particular chapter. Perhaps their hatred was inspired by the same strange motive which makes a civil the bloodiest of all wars—it was a case of Greek meeting Greek. Even a common religion, much less a common ancestry, failed at first to soften their animosities. The patriotic English primate aroused the rage of his conquerors by refusing to crown their leader, and the Church only escaped spoliation at the expense of its native clergy.<sup>1</sup>

The substitution of the Conqueror's alien nominees for the Anglo-Saxon priests restored for a time the waning jurisdiction of ecclesiastical Rome; perhaps, too, some of the systems of heathen Rome. Though William refused the Pope his homage, he re-saddled the soil with its old charge for Peter's pence.

As far as the new constitution would allow, Saxon as well as Norman kept up their original habits. Under feudal law the land was nominally the king's, but practically in the possession of his tenants-in-chief, who paid him for it an acknowledgment in homage and military services. They in their turn apportioned it amongst their vassals in exchange for their homage and services. This process of subinfeudation progressed until every acre that could be dignified by the term "soil" was held of a lord.

But the Teutonic race was instinctively opposed to autocracy, so that even the king (much less his barons) was never allowed to usurp unlimited powers over his vassals. When, therefore, the sovereign found it necessary to call upon his barons and other tenants-in-chief for any extraordinary service beyond what was due by their tenures, he was obliged to summon them together in order to obtain their united consent.

This assembly was the King's Court; to attend which, as Hume points out, was both a privilege and a burden: the former, because it increased the barons' power in proportion as it decreased the king's; the latter, because it drew them from the defence and development of their lands.

<sup>1</sup> It is right here to state that Bishop Stubbs shows that this hostility has been exaggerated.—*Select Charters*, p. 82.

They too held their courts (similar to the seignorial assemblies of the previous age), in which the business matters of the estate were discussed side by side with the judicial matters which we now associate with the more popular tribunals.

Each barony was a miniature kingdom, with its varying customs and laws ; a condition of affairs which urged its lord in the direction of complete independence of the central authority, and which left its tenantry wholly at the mercy of his despotic will.

But causes, happily, were at work, which counteracted these evils. Though Continental countries became thus subdivided into numerous principalities, this tendency did not reach any great lengths in England ; where the Crown was an hereditary possession, and the bulk of the superior classes constituted by the feudal system were still in the position of a conquering host, which had settled, sword in hand, amidst a hostile and spirited population. The sparks of their smouldering resistance yet lingered, and were quite sufficient to minimise inter-class differences, since the highest as well as the lowest constantly confronted this common danger, and needed a common leader. Then, too, the determination of William to be king as well as feudal lord, induced him to compel all land-owners (mesne lords as well as tenants-in-chief) to take the oath of fealty ; and the gathering on Salisbury Plain, consisting, as it did, of 60,000 landed gentry, reminded the nation that there was a greater personage than each man's immediate lord, who had a claim on his obedience.

But setting aside any comparison with Continental feudalism, it is remarkable how isolated and monotonous the life of a barony would become. The kingdom was split up into a few great estates, whereon the owner resided in an immense fortified castle, and wielded the power of a petty sovereignty, with all the customary surroundings of courtiers and administrative officials. The want of any regular occupation and excitement drove him to marauding on other baronies, and finally, to crusading abroad. Even the excitement of the chase waxed tame at times ; and as for husbandry, it was beneath his contempt. He was too untaught to take any delight in the fine

arts, and he left commerce and trade to the despised citizens or detested Jew. The music that he had learnt to love was the clash of arms; that of chinking coins was to be scorned as vulgar. His education, therefore, combined with his mode of life to endow him with a savage energy and despotic will, which only blood-letting could abate, and which involved the company of more than half the able-bodied male population that composed his barony, whenever opportunity or insult drove him forth to gratify these qualities in the tented field.

The essential feature of feudalism was the use of every kind of land tenure as a source of warlike materials, and it was a system which stamped itself into the character of the nation. The glory of successful warfare was the Norman's profits of proprietorship. When we come to treat of feudalism in detail, we shall find that every landed proprietor had to supply his particular quota to the national military chest. These might range from the special care of the king's person in battle to a horn's alarm note in some exposed border-land; from the garrisoning of a fortress to the interpretation of a hostile people's dialect; from the equipment of a squadron to the supply of a war pennon. In fact, it was to the land and its produce that Norman war ministers invariably resorted whenever the national defence wanted funds. Similarly in ancient Rome it was thus that all military expenditure was financed. There is a close parallel in the pontium et viarum refection, arcuum munitio, and tirorum productio of the Roman, to the Brycgbote, Burhbote and Fyrd of the Anglo-Saxon Trinoda Necessitas. But here is a coincidence to which we must not give undue importance. In every primitive fiscal system there would naturally be an overwhelming preponderance of land taxation. The finance officer of any rude Civil Service would discover every facility in the assessment and collection of taxes on land or produce, but the greatest possible difficulty in scheduling a fiscal tariff on other sources of national wealth. Even the Portoria tax of the Roman was an indirect charge on the soil. All that we have said is opposed to any marked progress in the development of landed property or husbandry of the soil. The area of unreclaimed bog or forest waste was not likely to

decrease under the hands of such new masters ; on the contrary, it increased, for the king's passion for venery led him into wholesale acts of agricultural devastation. The afforesting of nearly 3,000 square miles in Hampshire was but the chief and culminating act of a long series. This monster hunting-ground absorbed into its capacious maw manors and cultivated corn lands as well as towns, villages, and hamlets ; and traditional names still mark the sites of some of those thirty-six parish churches which the king's ungovernable desire had turned into sylvan haunts of the wild boar, or coverts for the red deer. The Norman aristocracy followed their king's example, and for the same purposes often drove the workers of the soil from their meadows, tillage fields, and pasture lands. The forest laws inflicted the fearful penalties of mutilation or death on man or dog if caught in pursuit of the deer. No person outside the select circle of the nobility was allowed to indulge in the sport of hawking. He must have been a bold fellow who would have run the gauntlet of a watchful host of wardens, verderers, foresters, agisters, regarders, keepers, bailiffs, beadle, and other forest police for the sake of a juicy venison steak ; nor was the game worth the candle when the detected possession of a falcon brought its owner before the dread Justice in Eyre of the forest. But when, what cannot but be termed Heaven's vengeance, aroused by the united wails of homeless peasants, maimed outlaws, and cureless priests, had struck down the red king on the very site of his father's crimes, the forest laws became reduced in severity, and properly tabulated by the Charter of 1217. After that, armless men and dogs mutilated by "lawing," were rarer objects of pity ; lands adapted for tillage escaped the king's afforestation schemes ; and both the laymen and clergy of the middle class were allowed to halloo their spar-hawks upon the quarry without incessant dread of the swainmote.

When the landed gentry of this period were engaged neither in warfare nor the chase, they were, no doubt, practising such games and warlike exercises as were best suited for the development of strength and agility. Thus fencing, buckler play, and tilting at the ring or quintain, afforded a rigidity of

muscle and quickness of eye which proved of service to its owner in the periodical tournaments or the sterner pastime of war. Such a constant demand on a man's nerve and agility must have prompted the Norman gentleman to a moderate use of the pigment, morat, or hippocras, with which he daily washed down his venison and spice-cake. Nor would late hours over a gambling bout conduce to a cool head in the morrow's tourney; thus few men remained long awake after curfew had rung the knell of all fires and lights.

But what of the unfortunate conquered—the “greedy Saxon swine,” as he was contemptuously termed by his more abstemious conqueror? Though elbowed out of all the choicest lands, he still had to look for means of subsistence somewhere within this island. Thane, ceorl, and villein were all, with a contemptuous indifference to accuracy, classified under the one despised title of “roturiers,” by this foreign aristocracy. Like the ranker at his regimental mess, or the self-made millionaire elevated by his wealth into a higher social circle, the Saxon must have been peculiarly sensitive to a contempt which his own sense of inferiority had shown him to be merited. The oppression and the scorn between them drove half the men of spirit out of the country to seek fortune where their swords would be most likely to command a higher price. The gross and the self-indulgent, no doubt, sought to dull the brain by gluttony, and to drown their keener sense of indignity by incessant draughts of mead. The ideal Saxon of Kingsley's invention was no more and no less true to life than that of Scott's; and Hereward, the soldier of fortune, was as common a type as Athelstane, the dull-headed thane. The Englishman of position and property fared far worse than his humbler countrymen, for the claims of hungry adventurers were numberless, and the Conqueror's only rewards were the appropriate fruits of confiscation, so that few tenants-in-chief could boast of Saxon blood. The lower the individual in the social scale, the less likely was he to be worth spoliation, until, when we arrive at the bondsman's class, we may doubt if many individuals realised much difference in the change of masters.

But the international struggle did not survive the first

century ; for one of the effects of feudalism is to constitute the lord a protector, and the protected a partisan. Vassals who had fought once or twice under their lord's banner, began to feel a pride in their leader, and he to recognise a claim in them to his goodwill. Even as a class, the conquered Saxons began to assume a political importance, whose co-operation might be worth securing by one side or the other whenever king and barons fell out. The Church, too, had always set her face against class distinctions, and had early called, as her head, the Saxon Brakespeare to the chair of St. Peter. Her influence must have been tremendous, since every younger son of the nobility who possessed a contemplative or studious bent, turned instinctively to her monasteries for a home, and every well-taught lady owed her education to convent breeding. The common glories and dangers of the Crusades, in which the blood of both nationalities had mingled under strokes from Saracen scimbers, must have further cemented the bonds of union. Though Macaulay may be right in representing England's first four Norman kings as Frenchmen, we cannot make any distinction between the laurels won by the two races arrayed under her banner. Nor can we see the absurdity to which he refers when English historians proudly exult in the splendid courage of Richard I. He may have been French bred ; but the blood that stirred his lion heart was that German, Viking, and Celtic mixture which coursed through the veins of his English subjects, and still fires the courage of her present Majesty's lieges. As well might we grudge the American his participation in that thrill of pride which stirs every Anglo-Saxon heart when mention is made of Shakespeare or Milton.

## The Middle Ages.—The Norman Period.

A.D. 1066–1154.

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### CHAPTER XI.

#### FEUDALISM.

It is a legal theory, hence a common error, to suppose that at the Conquest all the English soil became the demesne lands of the king.<sup>1</sup> If this had been so, all popular rights over the soil would have lapsed. It is, however, true that all justice was vested in the Crown, and therefore, except on sufferance, no private tribunal could deal with matters of a public nature. What the Conqueror claimed for himself was, not all the land, but all the seigniorial rights over it. These he redistributed amongst his followers in unequal portions. Whenever he found that one particular area of land subject to seigniorial rights was insufficient to adequately reward some successful general, he gave him half a dozen such areas. But he took care to decentralise the donee's power by scattering the gift in various counties, so that any attempts of the subject to revolt and concentrate his tenantry, would have attracted the attention of more than one county sheriff.<sup>2</sup> Each of these areas of land was henceforth termed a manor, in which the new owners had powers to keep a portion of the lands in their own hands, to impose services in return for another portion parcelled out to inferior tenants, to leave a third portion in waste, and to institute a court for the punishment of offences and the proper observance of duties and services. The new manor was, however, nothing more than the Saxon's tun. The fresh in-

<sup>1</sup> Jacobs, *Compleat Court Keeper*, ch. i.

<sup>2</sup> Stubbs, *Constit. Hist.*, Ed. IV., ch. ix. p. 296.

vaders were ethnically familiar with the machinery of its internal economy. Whatever portion of the territory had been sufficient for the Saxon thane's inland was found to be enough for the Norman's demesne. The system of communal agriculture was the only one adapted to unenclosed ground; and the people, since perforce they required firewood, turf, and pasturage from somewhere or other, would not have been grudged their rights over the waste, so long as they did not interfere with Norman predilections for venery. So the fresh lord turned out the late owner, replaced the latter's home with a castle, and elected his own seneschall, instead of the gerefa, as president of the seigniorial court, but interfered as little as possible with popular rights, customs, and agriculture.

But there had been franchises and liberties where the powers of sac and soc had been vested in seigniorial hands; there had been lords of the manor who had been presidents of the public courts as well; and there had been king's thanes who had wielded the sword of justice quite as firmly as any sovereign. Now, however, the Conqueror claimed a monopoly in the office of public magistrate, and he was little likely to leave in private hands so kingly a prerogative as the powers of life and death.

On the other hand, to entirely wrest jurisdiction from seigniorial hands before the more modern rights of landownership had been introduced and established, was doubly impossible at a time when the population of each manor was composed of defeated foes. From this dilemma the Norman statesmen formulated a compromise. The business of the court leet was still transacted side by side with that of the court baron. Juries were selected from the leading freemen of the hundred, the youth were registered in the tithing, the view of frank pledge was held, homage received, fines levied, sentence of furca and fossa pronounced, and all estate business transacted by the steward in the hall of the barony or manor.

But no one was allowed to confuse the two tribunals. At this youthful stage of the national growth, when the pages of the statute book were almost blank, it would be difficult to say how far the regulations for distinguishing the two jurisdic-

tions had gone. Afterwards, in Tudor and Stuart days, no confusion could possibly have occurred, although the seigniorial courts had become subdivided, and much of the more serious public business had been relegated to the assize courts and justices of the peace. Thus, in the court baron of later times, the steward presided as vicegerent of his master, the lord of the manor, and inflicted fines not exceeding forty shillings for trespasses, debts, and injuries. When, however, the same person presided as steward of the leet, his judicial mantle fell upon the shoulders of the suitors, nor could they do more than give a verdict, and thus enable the steward to certify for punishment to the Justices of the assize.<sup>1</sup> Not even a stranger could confuse the two assemblies, which were held at different dates, and not similarly constituted. Everybody knew that the court leet was a public tribunal, owing its inception to the Saxon sheriff's Tourn, and that the court baron was a private assembly, owing its inception to the Saxon's Halmote. In the earlier times now occupying our attention, there was already a code of unwritten laws which regulated the business of these seigniorial tribunals. The steward, even as president of the court baron, much more as president of the court leet, did not administer justice according to his own views of right and wrong, but was guided by certain rules and precedents, which found their way into print not long after the introduction of the printing press into Europe. By the beginning of the sixteenth century some half-dozen treatises appeared, which, in the words of Professor Maitland, were intended "to teach stewards how to preside, clerks how to enrol, and pleaders how to count and defend." These productions, however, were mostly plagiarisms of a set of still earlier records, in the shape of certain thirteenth and fourteenth century manuscripts,<sup>2</sup> which have been recently translated for the Selden Society by Professor Maitland and Mr. Baildon, and from which we now extract some information about the business of a thirteenth-century seigniorial court.

Let us suppose that "Sir Steward" has already settled him-

<sup>1</sup> Jacobs, *Compleat Court Keeper*.

<sup>2</sup> *The Court Baron, passim*, Selden Society, 1891.

self in his lord's seat of justice, that the baronial hall is full of litigants and offenders, and that the sworn bailiff is ready with his counts. The first case is some offence against the franchise of the lord ; some breach, say of the assizes of bread and beer, or some trespass of close, or some chasing of beasts in the seigniorial park, or some toll subtracted from the lord's mill. Let us suppose that it is a case of the first description. The bailiff explains the charge, and the steward addresses the offender in courteous terms : " Fair friend," says he, " hast heard that which the bailiff hath counted against thee ? " On a reply in the affirmative, the prisoner is bidden to answer in God's name. According to the formal language of the age, he or his pleader does so as follows : " Tort and force, and the damages of the lord and of his good folk to the amount of 100*s.* and the shame of 40*s.* and every penny thereof, and all that he surmiseth against him, and all that is against the ordinance and general constitution of the realm, and the statutes of the lord and his franchise defendeth William, or John, or Richard" (whatever his name may be), " who is here against the bailiff Robert by name, and against his suit and all that he surmiseth against him, and well he sheweth thee that right fully and loyally hath he performed the assize according to market prices since the feast of St. Michael until this hour ; and that this is the truth we are ready to aver in such manner as this court shall award that aver we ought." Plaintiff and answer thus made, the steward replies, " Fair friend," says he, " this court awardeth that thou be at law six-handed to acquit thyself that thou hast not since the feast of St. Michael broken the assize, in such wise as the bailiff here present counteth against thee." This judgment implies, in other words, that the defendant must produce by a given date a certain number of compurgators, varying according to his social standing, who will be required to make oath as to his innocence. Sometimes a dies amoris is granted in order that the parties may have an opportunity of coming to some amicable arrangement before the next hearing of the case.

When an end is at length made of the charges and defences in the court baron, the steward proceeds to inquire into such

cases where persons are accused of trespass by no man save the lord, and here the steward himself undertakes the prosecution in addition to inflicting the fines. The bailiff hands him a list of the cases written in a roll, to which he constantly refers for information. This branch of his official duties satisfactorily performed, there remains the plea of the Crown in court baron. The prisoners are brought before the steward by the bailiff, and charged. A jury, composed of the good folk of the vill, is impanelled; and the faces of the assembly assume a graver aspect in keeping with the more serious business in hand. The charge being made, the prisoner is called upon for his defence, and offered the right to challenge the jurors. He either confesses his guilt at once, or submits to the decision of his neighbours, "the good folk of the vill." Many a trembling wretch is standing there, in abject dread of hearing the stern command of his judge, "Take him away, and let him have a priest," which is tantamount to a sentence of death.

It will be seen that the justices, stewards, bailiffs, sheriffs, hundredors and representatives of halmotes had to be well versed in the intricacies of their various offices before they could become efficient in the administration of justice. The manner of pleading was not the same in any of the courts, whether of justices of the bench, justices in eyre, counties, hundreds, or franchises. A special and lifelong training could alone render a man familiar with the rolls and pleas of previous sittings. The times of their convocation varied according to the custom of the county. Every new steward was compelled to warn the bailiffs of the hundred or manor by letter when he was about to make his circuit; and there were, besides these, numerous other formalities to be observed before the business of jurisdiction could be legally performed. No wonder, then, that by the beginning of the sixteenth century there was a comparatively large supply of literature eagerly sought after by youths of the rising generation who were destined to occupy one or other of the judgment-seats in the various tribunals enumerated above.

There is no reason to suppose that seignorial was more distasteful to the masses than regal jurisdiction. During the

thirteenth century the sovereign's administration of justice does not compare at all favourably with that of the private individual. Ten or more years often intervened between the visits of the Justices in Eyre. Kings issued their writs of assize at prolonged and irregular intervals, so that the business of many years would have to be transacted in as many days. It was a busy time in the district, when the assize town was crowded with sheriff, coroners, bands of jurors from various townships, presidents of numerous bailiwicks, lords temporal and spiritual of franchises, knights and freeholders of the county, litigants and their pledges and attorneys. The entry of the dreaded Justices in Eyre was little short of a state pageant. The meeting between them and the great landed proprietors of franchises was exceedingly impressive. The dignified pleading of the former for their liberties, and the solemn granting of such by the latter, awed the crowd of common people and inspired it with a reverence for landed rights. The loyal oratory of the principal judge, the formalities surrounding the delivery of the articles of the Eyre, and the presentments of the jurors thereon, the infliction of fines, pains, and penalties, according to the custom of the country,<sup>1</sup> and the dread sentence of death, all helped to engender a wholesome respect for the law in the vulgar mind.

But when the business and ceremony was over, and the judges had gone elsewhere, it is very doubtful if there were fewer innocent persons left behind by them in prison, or fewer guilty persons at large, than after some lord of a franchise had exercised his powers of sac and soc in the seigniorial court of his property. The royal judges had each his special clerk, who filled in his special strips of parchment with the minutes of every day's proceedings. Since each set of parchments was stitched together and sent up to the Exchequer for preservation, there are plenty of Assize Rolls available for modern research. The corruption and extortion that these old MSS. bring to light, speak ill for the chances of those prisoners who were too poor to buy their freedom. The judge of the seig-

<sup>1</sup> Page, Article on *Three Assizes in the County of Northumberland*, Surtees Society, 1891.

norial court might be more arbitrary, but he was certainly less venal than the king's representative of justice. He seldom cared to keep his prisoners long under lock and key, but preferred to inflict a less troublesome if more summary form of punishment on those who had offended him. In the royal courts, on the other hand, delay between committal to prison and sentence was constantly occurring either through the royal negligence to execute the writ of assize, or the judge's attempts to extort bribes from prisoners in exchange for their liberty. It is not improbable that to these circumstances may be attributed the first appearance in England of gaol fever. If so, there was a grim justice in its invasion of the very judgment seat, and the retribution it wreaked there on the executioner of its humbler victims. Those sprigs of rue, rosemary, and other garden herbs, which to this day bestrew the judge's desk in some assize towns,<sup>1</sup> are thus not only picturesque survivals of an interesting past, but significant reminders of a supreme justice which overrules the very judgment-seat.

It is not without a purpose that we have given preference in this chapter on feudal land tenure to the jurisdictional tribunals of the country. The Norman baron was presented by his royal master with the necessary machinery of magisterial government over certain manors. Save in the case of his demesne lands it was not for many centuries to come that he could be said to have established full proprietary rights over the whole territory compassed by the royal grant. What remuneration he gave his king in return for the gift, and what remuneration he obtained out of it for himself, involves an explanation of the whole feudal system.

And in the first place we may note that the form which this remuneration took is corroborative of the assertion with which we commenced this chapter. If the Conqueror had claimed and redistributed the ownership of the land, that annual assembly would have taken the form of a colossal National rent audit. What he had redistributed were the seignorial rights over the land, and therefore what he demanded at Salis-

<sup>1</sup> Liverpool, for example.

bury was homage, i.e. a recognition that every lord of the people was himself a subject of the sovereign.

Now the Saxon land legislators had held one object only in view, and that was the defence of the lands they had usurped. For this reason they had instituted the *Trinoda Necessitas*, a military system which had been crushed by the Norman Conquest. Before it could be replaced there came a menace of Danish invasion. Between the fears of the enemy abroad, and the dangers of hostile risings at home, there arose in the national breast a sensation of helplessness<sup>1</sup> which gave a free hand to the Conqueror and his military advisers. They proceeded to introduce the polity to which they had been accustomed on the Continent. The old Saxon land legislation had mixed up the wants of the farm with those of the battle. The new system was solely the code of a warlike host. The soil, it is true, had to be cultivated, and the wretched class of *socmen* was an objectionable necessity, but its profits must be payable in warlike materials, not money. Stout hearts and arms were preferable to thrimsas and live stock in such boisterous times. The soldier tenant was the ideal of feudal polity, and the husbandman a small and despised class, with neither political power nor fixity of tenure, the fine for whose life was estimated at so low a sum as to be hardly worth recovering. Did the king want troops, his military tenants flocked to his standard. Did they require arming, the weapons were supplied by his tenants in petit sergeantry. Did his strongholds need garrisoning, those who held lands by castle gard manned the walls. Did his royal banner lack a bearer, a vassal by grand-sergeantry was ready for the office; and was a foreign war in hand, the tenants by escuage stepped into the ranks of the embarking host. What the king demanded of his tenants-in-chief, they in their turn demanded of their subfeudarii, adapting, however, the national system to their own individual wants.

Now, tenure by military service required one qualification only, namely the ability of the tenant to perform the service. Death, of course, prevented this, and it was only natural that

<sup>1</sup> Blackstone, *Comm.*, bk. II., ch. iv.

the lands should revert to the donor until a fresh military tenant was forthcoming. He who possessed the chief claim on the reversion, provided that he could perform the service, was the deceased's son, and, if he had more than one, the eldest was by his superior age and strength in nine cases out of ten the best qualified. These circumstances gave rise to the custom, not law, of primogeniture (for, save in the case of intestacy, there has never been a law on the subject).

When, therefore, the successor was a minor he was not eligible for military service, and pending his majority he and his fief remained in "Ward" of his master—not a bad arrangement in troublous times for either party concerned. But in order to shorten as far as possible this interval during which the reversionary interest had lapsed back to the lord, it was a further incentive for the vassal to bequeath the estates to his firstborn male.

Where the successor was of age it would seem that there could be no interval between the death of the late owner and the former's entry; but, for all that, the lord reserved a title to possession which brought in, for the sovereign, the incident of Primer Seisin, for the subject, that of Relief. These were theoretically a present, practically an obligatory charge, for the renovation of the fief. In early days of feudalism it was a gift of armour, and corresponded to the Danish custom of the heriot, which was also a donation of warlike accoutrements on a similar occasion. When the incident of non-entry was prolonged over a year and a day the fief was forfeited.

If a military policy is so far obvious it is even more so when we come to speak of the incident of marriage. No lord could brook the presence of an enemy in his midst, and such an untoward circumstance might at any time occur by the marriage of a vassal without consent. A female of a hostile barony was bad enough, but a male would be unbearable; hence the fine inflicted in the case of a female's marriage without consent far exceeded that in the similar case of a male.

For a like reason the lord's sanction was very essential in the transfer of lands to a fresh vassal. Whenever this occurred there arose the Fine of Alienation, an incident which induced

the alienator to make an arrangement with the new subfeudarius, whereby the latter held his lands of him instead of the original grantor of the fief ; and before this abuse could be checked the Statute of Quia Emptores was necessitated.

Perhaps the three most expensive, if not most important, events in the life of a Norman warrior was his son's coming of age, or rather, reception into the ranks of knighthood, his daughter's marriage, and his own capture in battle. To defray the expenses respectively of equipment, dowry, and ransom, provision was made under the feudal incident of Aids, whereby another theoretical "donation" became obligatory on the vassal.

Whenever a vassal died without an heir, or whenever he committed any act unworthy of his feud, the latter reverted to the Lord, an incident technically termed Escheat. When the first of these occurrences took place, it was an Escheat propter defectum sanguinis ; when the second, it was an Escheat propter delictum tenentis, more commonly called forfeiture.

The incident of Purveyance and Preemption was a privilege, mercifully for English agriculture, confined in this country to the Crown. It was of two kinds, the great purveyance, which compelled the nearest farmers in times of war to furnish the king's armies and castles with provisions at current prices, and the smaller purveyance, which consisted of certain farms on the king's ancient demesnes, by the cultivation of which for royal necessities, the lords of neighbouring manors held tenure. This method, however, soon proved cumbersome, and was therefore replaced by the appointment of royal purveyors, who exercised rights of preemption and other privileges which, leading to gross acts of injustice and exaction, ultimately required restrictive legislation.

So far we have been concerned with feudal tenures in their relationship to military requirements. Many of the incidents, like the head of Janus, had a peaceful as well as a warlike aspect.

There is no doubt, for example, that the incident of Relief closely related as it was to that of the heriot, included the farmer's peaceful offering on succeeding to the inheritance. We have already stated elsewhere that the lord's capital supplied the socman's farming stock, and traced to this practice

the agricultural application of this still customary incident in copyhold tenure. It is difficult to fix any date at which most of these feudal incidents came to bear a twofold significance. The transition stage from arts of war to those of peace extended over many centuries of national history. Thus, in the picturesque and imposing ceremony observed over the grant of a fief, we read of the kneeling vassal, with sword ungirt and head bare, the exclamation "Je deveigne votre homme," and the lord's kiss. In fact, all pertaining to the livery of seisin breathes of war, and is the very reverse of the peaceful and prosy business of a modern lawyer's conveyance. Yet in the later court baron a very careful distinction was made between homage and fealty. There was in the latter no lord's kissing, no humble submission of the vassal on bended knee with head uncovered, and no solemn adjuration of a life's devotion in a soldier's cause. The tenant merely swore to faithfully manure his lord's ground and carefully discharge his rural duties. Without multiplying instances like these, it may be stated generally, that as the sword became beaten, into a plough-share, and as men turned from devastating the soil to its improvement by agriculture, that system which owed its inception to war became revolutionised in its chief characteristics. The villeinage rose into the dignified tenure by soccage, while military service sank in social importance. The tenant of each knight's fee, *i.e.* portion of land of £20 annual value, no longer needed to don his armour and serve his forty days in the field, but was permitted to discharge his obligation by deputy. Eventually money equivalents, under the incident of scutage, allowed the farmer to till his lands at home, whilst the mercenary fought his battles abroad.

In like manner the incident of Frankalmoigne (subsequently checked and regulated by the Statutes of Mortmain) freed the ecclesiastic from the incongruous pursuit of arms.

So far the mention of feudal incidents has divided the nation into soldiers and farmers; but there was a third and very necessary class, composed of artificers, who, finding their position insecure in the country districts, gravitated towards the old Roman towns or built fresh ones for themselves. Even in

Saxon times these communities had received both protection and subsistence by the gifts of garrisons and lands, in return for which they paid certain taxes. At the Conquest the tenure by Burgage drew them within the folds of feudalism.

Perhaps the most striking circumstance connected with the introduction of this new polity into England was the little disturbance it created in the pre-existent economy of land tenure. This was no doubt mainly owing to the common Teutonic origin of both conqueror and conquered. Both nationalities viewed the land through the same pair of spectacles. Its possession involved the fulfilment of certain seigniorial duties, the recognition of certain popular rights, and the performance of sundry national requirements. The obligation of military service had been just as inseparable from allodialism as it now was from feudalism. It would puzzle a Norman lawyer to have satisfactorily explained to a Norman lord the practical difference between a National Defence Fund based upon land tenure instead of land ownership. When we bear in mind how very closely connected the two systems were to each other and how very remote they were from what we now understand by landed proprietorship, the distinction for all practical purposes is reduced to a minimum.

No wonder then that the transposition of the two systems was effected without disturbance. The internecine struggle and the expulsion of the bulk of the Saxon landed gentry, had, it is true, convulsed and stirred to its very depths the whole country. But this was an event outside of and accidental to the revolution in the Land Laws, which, had there been no change of ownership, might have been carried out as simply and silently as the Local Government Reforms of 1890. In nearly all the incidents of feudalism we can trace an Anglo-Saxon parallel, sometimes a shadow of some still earlier economy.

The thane was the prototype of the knight, the heriot of the relief, and the fyrd of the knight's fee. But the incident of Wardship takes us back to the times when blood relationship welded together in one protective system, not only the head of the minor's kin, but the whole of his family.

In the incident of the Escheat we can also discern a popular claim on the soil which must have been a lingering survival of the old Mark. The escheat was both a royal and a seigniorial prerogative. In its former aspect it derived its origin from the old Saxon practice, by which not only the lands but whatever else the offender possessed were forfeited to the king. But even before the days of kings, when the community was the sovereign power, there must have been a similar practice. Possibly in this primitive form it may have been implicated with some early system of the frank-pledge. Be this as it may, this earliest shape of forfeiture is indistinctly recognisable in the later feudal incident of escheat. As the territorial rights of the vassal originally belonged to the lord, they very properly reverted to him when escheat or forfeiture occurred. But not so the late vassal's works of industry on the escheated lands. They became the property of the public, and that is no doubt the principle held in view when this incident was first introduced into the feudal system. Subsequently we have, by a legal quibble, the king, as chief public magistrate, carrying all off that he can and destroying the rest. Then, in order to get out of so profitless a custom, both parties agree that a year's rent shall be substituted for the king's right of waste. But these later steps were the consequences of the different aspect which landownership had now begun to assume. The advance in national agriculture helped forward the change. As wars ceased, men turned to the improvement of their seigniorial property; and when once his capital began to be sunk in the soil, the landlord tightened his grasp on real property. Much of this was the work of centuries; and the statute finally abolishing military tenures was not passed until the Restoration era, from which date feudal incidents affected only the forms whereby real property is conveyed, or were permitted to exist on account of their picturesque surroundings. There was an old officer in the Exchequer as late as Charles II. who remembered the payment of herring pies to the king for the manor of Carleton in Norfolk. The annual delivery of a mew'd sparhawk, a pair of spurs, gloves, and such-like trifles into the Exchequer (were) common incidents of tenure.

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Rowland de Sarcere held 110 acres of land by sergeantry, for which he should perform on each recurring Christmas Day, before our sovereign lord the king, altogether and once a leap and a puff, a service by no means so picturesque as that which drew crowds on each successive coronation ceremony to see a Dymock of Scrivelsby in Lincolnshire ride up Westminster Hall, on a goodly white courser, armed at all points in rich armour, and having a plume of blue feathers at his helm, preceded by the Knight Marshall and followed by his trumpeters, sergeant at arms, and esquires, with the Earl Marshall riding on one side of him, and the Lord High Constable on the other. Then the York Herald would proclaim, to the awe of the gaping crowd at the lower end of the hall, the following challenge—"If any person of what degree soever, high or low, shall deny or gainsay our Sovereign Lord King — King of England, Scotland, France and Ireland, Defender of the Faith, son and next heir of our sovereign lord — the last king, declared to be right heir to the Imperial Crown of this realm of England, so that he ought not to enjoy the same, here is his champion who saith that he lieth, and is a false traitor, being ready in person to combat with him, and in this quarrel will adventure his life against him on what day soever he shall be appointed." Then, to the huge delight of the spectators, off comes the champion's gauntlet, which falls clashing upon the stone pavement, there to lie for a short interval till returned to its owner by the York Herald. The ceremony is repeated once in the middle of the hall, and once more at the top of the steps, after which some court officials tender the king a gilt cup of wine, from which he drinks to the Champion. With several reverences the latter then drains the cup to the dregs and backs out of the royal presence, taking the piece of plate for his fee according as had been adjudged him by the Court of Claims. The crowd dissolves, and the service of grand-sergeantry is over. Under that of petty-sergeantry the Dukes of Marlborough and Wellington hold their lands on condition of the presentation of a flag to the sovereign. These instances, perhaps, are the last lingering evidences of that warlike pageantry which surrounded the heyday of feudalism. For

their glamour to charm the modern eye requires surely the stage scenery of battlement, tower, and keep as well as the brilliant costumes that we associate with the Middle Ages. The imaginative tourist on a Rhine steamer may sometimes forget his immediate surroundings and dream of feudal times when he gazes up at the castle of some robber baron under the Othos silhouetted against the westering sun, or glances down on the ancient church of his tenant in frankalmaigne centre of a village that once held his vassals, and as the steam-boat glides past the ruins of that very pier which paid the baron's dues, he may listen in fancy to the winding of the horn which summoned the moss troopers to "spur, spear, and snaffle."

The customs of these ancient tenures we have seen vary considerably, even in the same species of feudal tenure. Thus in that of sergeantry, the gay scene in Westminster Hall soars as near the sublime as the leap and the puff of the le Sarceres nears the ridiculous.

The manor of Aston Cautlou in Warwickshire has to supply the king with a man armed with a bow without a string and one basnet or helmet.<sup>1</sup> That of Bericote involves the service of keeping a white young brach with red ears, to be delivered to the king at the year's end. That of Henley in Warwickshire, the service of three shillings or a pair of scarlet hose. In the manor of Stoneley (also in Warwickshire) four bondmen held each one messuage and one quartron of land by service of making the gallows, hanging thieves, and wearing a red clout betwixt their shoulders. The manor of Cukeneys was held under service of shoeing the king's palfrey,<sup>2</sup> with the prospect of having to supply another of four marks price if he lamed the beast in the process. East Bilsington in Kent was held by service of presenting the king on Coronation Day with three maple cups. Narbrough was held by castle gard, which could be redeemed by wayt fee, a term no doubt signifying a money equivalent in lieu of attendance or waiting. Lastres in Herefordshire was held under service of a

<sup>1</sup> An instance of tenure by petit-sergeantry.

<sup>2</sup> Also an instance of tenure by petit-sergeantry

goose fit for the lord's dinner on Michaelmas Day; Burgus de Guldeford under that of protecting the king's laundresses. Bertram de Criol was seised of the manor of Setene in Kent under service of providing a vautrer to lead three greyhounds when the king should go in Gascony, so long as a pair of shoes of fourpence price should last. Wrenoe of Shropshire performed the service of interpreter between Welsh and English.<sup>1</sup> The Greens of Norton Dauney in Northamptonshire have to hold up their right hand towards the king upon Christmas Day. Sloley of Sloley must give the king a poleaxe or xiid.<sup>2</sup> in silver every time his royal master marches into Scotland. The holding of a lord's stirrup, the gift of a chaplet of roses on Midsummer's Day,<sup>3</sup> the blast of a horn<sup>4</sup> on perceiving an invasion of the Scots, the charge of the coronation napery, the maintenance of dogs for the destruction of wolves, foxes, and other vermin, the delivery of a pair of tongs into the Exchequer, are but a few examples of the multiform services required by feudal tenures, some of which from their very absurdity have survived up to this date.<sup>5</sup>

There are also a few customs so quaint and ludicrous as to be worthy of description on this account only. Thus on King's Hill at Rochford in Essex, on the Wednesday morning after Michaelmas Day, at cock's crowing, there is by ancient custom a court held by the lord of the Honour of Raleigh, vulgarly termed the Lawless Court, at which the steward and suitors whisper to each other. There are no candles, and a piece of coal is substituted for the ordinary uses of pen and ink. The absentee who owes suit or service forfeits to his lord double rent for each hour of absence. The title of it in court rolls runs thus:

Curia de Domine Rege  
Dicta sine Lega,  
Tenta est ibidem  
Per ejusdem consuetudinem;

<sup>1</sup> Tenure by Latimer.

<sup>2</sup> Another instance of tenure by petit-sergeantry.

<sup>3</sup> An instance of blench-holding.

<sup>4</sup> Technically termed tenure by cornage.

<sup>5</sup> *Vide Blount, Jocular Tenures.*

Ante ortum solis,  
Luceat nisi Polus,  
Nil scribit nisi Colis.  
Toties voluerit,  
Gallus ut cantaverit ;  
Per cuius solum sonitum  
Curia est summonita  
Clamat clam pro Rege  
In Curia sine Lege, etc., etc., etc.

Every one knows the custom of the Priory of Dunmow in Essex. We cannot, however, refrain from quoting the doggrel which the applicant for the famous flicht of bacon has to repeat, kneeling on two stones at the church door.

" You shall swear by the custom of our confession  
That you never made any nuptial transgression  
Since you were married to your wife  
By household brawles or contentious strife,  
Or otherwise in bed or at board  
Offended each other in deed or in word,  
Or since the Parish Clerk said Amen,  
Wished yourselves unmarried agen ;  
Or in a twelve month and a day  
Repented not in thought any way ;  
But continued true and in desire  
As when you joyned hands in holy Quire.  
If to these conditions, without all fear,  
Of your own accord you will freely swear,  
A Gamon of Bacon you shall receive,  
And bear it hence with love and good leave ;  
For this is our custom at Dunmow well known,  
Though the sport be ours, the Bacon's your own."

The customs pertaining to the Honour of Tutbury involve the assembling annually of a species of court leet, over which the king of minstrels presides. The suitors of this peculiar court are also minstrels residing in the counties of Stafford, Derby, Nottingham, Leicester and Warwick. Two juries are empanelled by the Stewards of Music, each consisting of twelve minstrels, who are sworn by the steward to keep the King of Music's counsel, their fellows' and their own. The better to inform the jurors of their duty the steward gives them a lecture on the science of music, and the latter then proceed to the election of a new king, and three stewards of

music, to which a fourth is added by the steward's selection. Warrants are issued by virtue of which the stewards of music can distrain and levy in any part of the honour all fines and amerciaments imposed by the juries on erring minstrels. The one moiety of the fines the stewards account for at the next audit, the other they retain themselves. The proceedings closely resemble those of the Court Leet. After a feast a performance ensues, which is certainly the principal event of the day.<sup>1</sup> One of the manor bulls, whose horns have been shortened, and ears and tail cut off, is smeared over with soap. Some pepper is blown into his nose, and the poor brute is let loose amongst the minstrels. If they can cut off a piece of his skin before he runs into Derbyshire, he is the King of Music's bull; but if not, he is the Lord Prior's again. The custom originated in King Henry Sixth's reign, and was changed about King Charles II.'s time into a cudgel fight between the young men of Staffordshire and Derbyshire, who strove the one party to drive the bull into Derbyshire, the other to keep him in Staffordshire, a contest which may by now have degenerated into an ordinary football match, to which in several respects it bore some slight semblance. Whether some older custom prompted King Henry to trammel his gift with these exceedingly curious conditions, or whether they owed their inception to the after-dinner suggestions of his court fool, we are unable to determine.

The sale by the hawkers of Scarborough each Shrove Tuesday of parti-coloured balls to persons of both sexes, apparently as a necessary preliminary to a stick fight on the sands; the grand tug of war at Ludlow, with its incidents of red and blue knob and apotheosis of the chimney sweep's wife; the football match between All Saints' and St. Peter's in the streets of Derby, and many such friendly contests in other parts are cited by Mr. Gomme in his village community as relics of the ancient feuds of a tribal race. Perhaps the real origin of many of these time-honoured customs lies somewhere between the court-fool theory and Mr. Gomme's more dignified explanation.

At any rate, there is no mistaking the inference of the famous

<sup>1</sup> The foregoing instances are taken from Blunt's *Jocular Tenures*.

Charlton spur, which was always served up in a covered dish whenever the Hesleyside larder was empty, a relic which brings us back to that period of history when any excuse was good enough for starting a foray, and from which some of these old customs have led us astray.

Such briefly was the famous Feudal System, out of which the artist's brush and the novelist's pen have extracted so much to charm the mind, that it is difficult for a modern imagination to make room for what in it was inimical to the subject's freedom and the nation's progress. A casual observer sees only in it the picturesque attire of the noble, hears only the resounding shout of the knights errant, or drinks in the melody of its minstrelsy.

And yet there was much in it to admire; for did it not create a now extinct courtesy betwixt man and man, a punctilious reverence for the woman, and a generous respect for weakness and old age, which rendered it a fitting attribute of that religion which was fast spreading over Western Europe? The creed and the polity of Christendom acted and reacted upon each other, so that the chivalry of feudalism permeated religion, and Christian integrity found expression in the affairs of secular life. What else was it that induced the rude warrior to doff his head-covering in the presence of the priest, and led St. Louis of France to tend the sick on bended knee, and made Francis de Sales preach reverence rather than pity for the impotent, or stamped knighthood with the impress of the most scrupulous honour, and elevated mere animal strife into a contest where to take an unfair advantage was to commit social suicide?

## The Middle Ages.—The Norman Conquest.

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### CHAPTER XII.

#### DOMESDAY BOOK.

It is evident that the intricate machinery of feudalism could work neither smoothly nor accurately unless some general record was taken of the conquered lands. Not only were fullest particulars necessary of those portions granted to the Conqueror's tenants in chief, but also of those 1,422 manors, 68 royal forests, 13 chases, and 781 parks, which he reserved as his own possessions.<sup>1</sup> An accurate list was required, both of that host of 60,215 armed men each of whose forty days' service provided the fee of a knight; and of the population from which the profits of wardship, marriage, reliefs, forfeitures, and escheats could be computed. The land, too, would have to be carefully measured for the purposes of collecting the £80,000 due from the six shilling tax on each hide, first levied to repay the costs of the survey, and which remained as a permanent impost, instead of the old Saxon charge of Danegelt. Even the houses had to be counted in order to acquire particulars for the triennial tax of one shilling on each hearth. The dates and localities of public markets and fairs had to be ascertained for the sake of their dues and tolls; nor must we except those irregular sources of income, such as the plunder of churches and monasteries, whose fat endowments this far-searching record placed under

<sup>1</sup> William's revenue is reported to have been £1,060 8s. 1*½d.* every day over and above free gifts, fines, and amerciaments. He had also 60,000 horsemen at his command, without any expense to his purse. Kelham's *Domesday Book*.

the greedy eye of the king. These, then, were the causes which brought into being that vast national terrier, the Domesday Book, which included a survey of the whole kingdom save the four northern counties and part of Lancashire. It specified the names of proprietors, the nature of their tenures,<sup>1</sup> the quantity of their arable, meadow pasture, and woodlands; in many counties the number of their tenants, villeins, cotarii, and servi; and, if we may credit the *Anglo-Saxon Chronicle*, there was not even an ox, cow, or pig that was not described in its crabbed Latin manuscripts. It was a modern Ordnance Survey and a census combined. It was more; for it included a schedule of the nation's assets in live stock and a land valuation as careful and complete as that drawn up by any modern agent called in to revalue farm rents for some landed proprietor or rating authority. It was, too, a history; for, even though it doubled the difficulties of their task, the king's justiciaries were ordered to compare every particular item of the survey with its corresponding item in the preceding reign, whereby was afforded an accurate record of the devastating consequences of invasion.

Ordered in 1085, it was finished the following year, an incredibly short time when we compare its ten years' passage through the press when reprinted in 1783, or the many years required for a modern Ordnance Survey. The rapidity of its preparation, as well as its Anglo-Saxon cognomen, remind us that earlier though less complete records were already in existence. First known as the *Liber de Wintonia*, it subsequently passed under the names of *Liber Regis*, *Liber Censualis Anglice*, etc. In 1522 it was rewritten, and called the *New Domesday Book*. It was formerly preserved by the side of the Tally Court in the Exchequer, under three different locks and keys, until in 1696 it was removed to the Chapter House at Westminster. In 1861 a facsimile copy was commenced

<sup>1</sup> It did not, however, record the services due from the villeins, which, nevertheless, we are able to get at in such works as the *Liber Niger* of Peterborough, written about forty years after, and which corroborates the lists of services in the *Rectitudines Singularum Personarum* of the Saxon era. *Vide* Ashley's *Economic History and Theory*, Bk. I., p. 8.

by photozincography under the supervision of the Ordnance Survey Department, and in 1872 the Local Government Board undertook a general return of the owners of the land, which was published in 1876. Up to 1522 the taxes were levied according to the divisions in the original survey, after that date according to those in the newer work.

Except for the scant information of the chroniclers, the *Liber Niger* of Peterborough, the Pipe Rolls, and a few charters, this book is our only source for nearly two succeeding centuries of the nation's social life. Professor Rogers, who devoted upwards of a quarter of a century to research, has given out as his belief that neither farm account nor manor roll existed before the last twelve years of Henry the Third's Reign. From Domesday Book, therefore, must be extracted whatever will throw light on the land history of Conquest days. Perhaps the most noticeable feature in the work is the care bestowed on the accurate returns of the national possessions in live stock. This excites little surprise if we bear in mind that personal property in those days was far more valuable than real. The intrinsic value of flocks and herds exceeded that of the pastures which contained them, almost as much as the value of a banker's bullion exceeds that of the strong room which holds it. This fact also explains another characteristic of the age, viz. the comparative opulence of younger sons, who by inheriting their father's personality often came into possession of his live stock, to which the custom of primogeniture seldom extended. In fact, the bequest of Norman times was often of greater value than the demise. But perhaps the chief proof of the low value attached to real property in the mediæval age may be sought in the inaccuracy of the land measures. Hitherto a few loose and general remarks have sufficed when discussing the hide. Now, however, when Domesday Book teems with statistics relating to land areas, we can no longer shirk the question. What, then, was meant by the terms *Hide*, *Carucate*, *Mansum*, *ox-gang*, *plough-land*, etc., etc., which constantly crop up either in Domesday Book or the earlier charters? The latter were to the land-owner what the former had been to the king, and when we

come to examine a few of the earliest specimens, we shall be less trammelled by difficult terms if we clear the way once for all by a thorough examination of their meaning now.

The carucate is evidently derived from the Latin *caruca*, a four-wheeled carriage, but its abbreviation "carr," is an old Gallic term (hence *karle* and *ceorle*, Saxon for rustic). It was understood by the Normans to mean "plough," and the carucate was a Norman innovation which finally superseded the old Saxon term "hide." Thus in *Domesday Book*, when referring to the distribution of land in the half-hundred of Witham, the surveyors (very likely unconsciously) retain the old term "hide" when noting particulars in King Edward's reign, but substitute the term carucate when tabulating the extent of the Conqueror's demesnes in the same district. There is sufficient evidence to lead us to conclude that all the terms mentioned above were synonymous, and denoted an indefinite area of land understood to contain as much as could be ploughed in one year. Applied geometry, Gunter's chain, the theodolite and protractor, as well as the enhanced value of land now, have all helped to educate the modern eye to a pitch of accuracy which expects too much from a Saxon or Norman land surveyor. It was of no practical use to a landowner of the eleventh century to ascertain how many thousand acres of waste land he might possess in excess of the live stock required to stock it, or husbandmen to cultivate it. The land-capitalist's fortune consisted, not as now of broad acres, but of flocks and herds; and though perhaps he could scarcely tell the *Domesday* commissioners the extent of the former, he could count the latter without the omission of either a hoof or a horn. What we have said of the plough-land applies with equal force to the virgate, or yard-land, the knight's fee, and other land measurements. The rough and ready calculations of the *Domesday* surveyor were analogous to the process whereby a modern valuer computes the probable area of a clay-bed to be sold for puddling purposes; but when the chemical analyst of the future discovers some cheap method for extracting its aluminium, the vendor will be no longer content with hasty foot-rule measurements of its depth and the careless pacing of

its surface. Prefacing our approaching task thus, we shall be less disappointed at the unsatisfactory results which it will produce. Henry of Huntingdon defines the hide as "Hida autem Anglice vocatur terra unius aratri culturæ sufficiens per annum." Bede calls it "Familiam," and says it was as much as would maintain a family. An old MSS. declares it to be 120 acres. Gervase of Tilbury made it 100 acres. Spelman cites the Malmesbury MS. as computing it at 4 virgates, or 96 acres. The *History of Founding Battle Abbey* makes it 6 virgates, or 144 acres. Camden gives us a choice of two solutions: the "acreage-ploughable-in-one-year" theory, and the "four yard-land" theory, which latter merely replaces one ambiguous term with another. Sir Edward Coke holds the negative idea, viz., that these various terms do not contain any definite number of acres. Fleta estimates the hide at 180 acres. Professor Rogers throws no additional light on the subject. For what Seeböhm and Vinogradoff have to say we shall reserve space later on.<sup>1</sup> To add to our difficulties, the word acre raises further theories,<sup>2</sup> as it was originally applied to any open ground or field, such as castle acre, west acre, etc. Then it came to imply the lots into which the infield was divided, and was found by the Commissioners in 1876 to widely vary in area even in the same locality. The virgate, too, may mean 24, 28, or even 40 acres, though it was understood at the time to hold 4 fardels, whatever area they represent. Two centuries later than the great survey, Walter of Henley<sup>3</sup> defines a plough-land; and since he had acted as a farm bailiff his evidence is almost as worthy of credence as that of any modern land surveyor's. He says: "If your lands are divided

<sup>1</sup> Dr. Stubbs, in chap. v. of his *Constitutional History*, supplies in footnote No. 2. p. 79, the views of Kemble, Grimm, Robertson, and G. L. von Mauzer, on the subject. Stubbs himself believes the later hide to have been 120 acres, and suggests that some of the greatest inconsistencies may have arisen from the term being applied to the entire share of one man in the four common fields; but then were there four or three common fields?

<sup>2</sup> It was not till 33 Ed. I that the acre was fixed by law as forty perches long and four wide.

<sup>3</sup> *Vide* Walter of Henley, *Husbandry*, R.H. Society's translation, 1890.

in three, one part for winter seed, the other part for spring seed, and the third part fallow, then is a plough-land nine score acres. And if your lands are divided in two, as in many places, the one half sown with winter seed and spring seed, the other half fallow, then shall a plough-land be eight score acres. . . . Some men will tell you that a plough cannot work eight score or nine score acres yearly, but I will show you that it can. You know well that a furlong ought to be forty perches long and four wide, and the king's perch is sixteen feet and a half; then an acre is sixty-six feet in width. Now in ploughing go thirty-six times round to make the ridge narrower, and when the acre is ploughed, then you have made seventy-two furlongs, which are six leagues, for be it known that twelve furlongs are a league. And the horse or ox must be very poor that cannot from the morning go easily in pace three leagues in length from his starting place and return by three o'clock. And I will show you by another reason that it can do as much. You know that there are in the year fifty-two weeks. Now take away eight weeks for holydays and other hindrances, then are there forty-four working weeks left. And in all that time the plough shall only have to plough for fallow or spring or winter sowing three rods and a half daily, and for second fallowing an acre. Now see if a plough were properly kept and followed if it could not do as much." An anonymous writer of the same century mentions the vagaries of area in the perch, which varied in different parts of the country from 18 to 20, 22 and 24 feet. Happily, however, Walter of Henley, as we have seen, defines the statute or king's perch as being  $16\frac{1}{4}$  feet, and his acre, like ours, works out to 4,840 square yards. If we dare not quite apply the evidence of two centuries later to a solution of this term as used in *Domesday Book*, we can draw certain general conclusions, which, if they do not solve our difficulty, will at least help us materially towards solution.

In the first place, Walter of Henley defines the shape of an acre of ploughland by describing it as 660 feet  $\times$  66 feet wide, or in modern surveyor's language, ten chains by one chain. This sets up an intimacy between the acre, the furlong, and the

mile, the first of which was so shaped for arable purposes as to be an eighth of a mile, *i.e.* one furlong long. It is interesting to discover in this manner that all our modern lineal measurements originated in agricultural usages. Even the perch was derived from the ploughman's estimate of the width turned up by the passage of his implement four times up and five times down a furlong. The four perches in width are, says the author, ploughable in thirty-six "rounds," an expression which still exists in ploughman's vocabulary, and which represents the passage of the plough once up and down the space cultivated. The width of sixty-six feet is therefore split up into seventy-two furrows, and the distance travelled over by the plough during the cultivation of one acre is seventy-two furlongs, or nine miles. The breadth of the furrow is eleven inches, and the area ploughable in one day is a little short of an acre on unturned land, and an entire acre for a second time over. Referring to the practice of a modern ploughman, we find that his furrow is five inches deep by nine broad on fallow ground, and six inches by seven inches on lea ground; that a yoke of two oxen, though slower than a pair of horses, can plough as much as the latter, because they never stop before they turn on the headland; and that the extent of ground per diem is very much the same as that given by Walter of Henley. But show the modern ploughman a picture of the clumsy implement in use then, and remind him of the wretched condition of an ox often kept in the open all the year round, and he will indignantly repudiate any comparison of times between himself and the Norman socman. Yet by three o'clock, the same time at which the Henley man's oxen are unyoked, he will, if he has worked moderately hard, have accomplished the same area, though owing to his narrower furrow he will have travelled two miles more than the 13th century ploughman. These but slightly increased capabilities of the modern agriculturist are by no means a cause for boasting. We have only to compare the rude plough used by the Henley bailiff, and the wretched quadrupeds (whether horses or oxen matters not) which drew it, with the light effective implement turned out now-a-days by a firm like Ransome & Sims, and such

ploughteams as breeders find it worth their while to produce for showyard purposes, and the result is not comforting to the pride of us modern farmers.

The writer next points out that the Trinity system of cultivation requires a different computation of the carucate. When, says he the land was divided into three parts (*i.e.* winter crop, spring crop, and fallow), the carucate was 160 acres. This difference is explained by the custom of ploughing summer fallow thrice, which still exists on heavy land farms where the farmer can afford to pursue so excellent a system of husbandry.

All the conclusion that it is safe to draw from the study of this thirteenth century writer's remarks is, that the hide, or carucate, was an area of land ploughable by one man and beast within the 308 days which constituted his working year; that in Walter of Henley's time and neighbourhood from 160 to 180 acres could be thus cultivated during those periods of the year when the seasons required it;<sup>1</sup> that, since the interval of time between the introduction of the Saxon system of hide measurement and the date of Walter of Henley's MS. exceeds several centuries, it is reasonable to conclude that, from improvements in implements and beasts of burden, the acreage of the carucate had gradually increased, even though, as we have shown, the acreage ploughable in one day has remained almost constant ever since; and lastly, that from the indefinite and varying methods of calculating the area of perches and virgates, the carucate or hide did not represent the same acreage in all parts of the country, nor even the same area on hilly and stiff soils as on those that were level and light.

Let us now compare these conclusions with those of Seeböhm. He starts with the virgate or yard-land, which he describes as bundles of land composed of acres or half-acres. Searching first the *Manor Rolls* of Winslow, he discovers the case of a virgate, which loses its indivisible unity by becoming *relet* in

<sup>1</sup> That there were two areas of land understood by the term plough-land may be inferred, I think, from the sentence, "Quant vos purrez e quantes des carues vos auctz en chescun liu petit ou graunt e quantes vos purrez auer."—*Les Reules seynt Roberd.*

portions to several persons. The tenancy of John Moldeson is found thus to consist of seventy-two half-acre strips, besides his messuage in the village of Shipton. Comparing this single instance with other neighbouring tenancies in the same manor, Mr. Seebohm concludes that every virgate in the Winslow Lordship consisted of, besides the messuage, between thirty and forty modern acres of land, scattered in three equal numbers of half-acre strips over each of the three common fields. Using these data for purposes of comparison with the Hundred Rolls of Edward I., this writer extends his conclusions to an area of country embracing five great Midland counties. Though the bundle of scattered strips called a virgate did not always contain the same number of acres, and though the hide did not always contain the same number of virgates, the author gathers that the normal area of this larger land measurement was 120 acres, or four virgates. For purposes of assessment, the land measurements involved the area of demesne lands, and these were not necessarily cut up by balks into acres. Now this fact draws a distinction between the hide and virgate as actual holdings and such areas as customary land measures. From the same sources of information Mr. Seebohm notes an entry showing the scutum or knight's fee to contain four hides of land; in other words, each virgate is one-sixteenth of a scutum, and to corroborate this fact several entries show that it was charged 2*s.* 6*d.* as scutage, or one-sixteenth of 40*s.*, which we know to have been the annual value of a knight's fee.<sup>1</sup> Thus the normal acreage of both hide and virgate is connected with the scutage of 40*s.* Without analysing further Mr. Seebohm's conclusion regarding the correspondence between the national acreage and coinage, we shall now proceed to examine his evidence connecting the hide with the carucate. Again the Hundred Rolls afford him data by which he can show that the carucate occasionally contained the identical normal acreage of the hide, but often dropped below or exceeded this area. It was, he decides, what it literally

<sup>1</sup> We must be careful to distinguish here between the intrinsic value of a knight's fee, which was from £15 to £20, and the annual scutage payment (40*s.*) on a knight's fee.

signified, the area of land ploughable by one team in one year, and varied according to the stiffness of the soil, conformation of the ground, and strength of the plough beasts. Here then is evidence drawn from totally different sources, corroborative of what has been already concluded from a study of the Henley author's facts.<sup>1</sup>

But before we dismiss this subject of the Mediæval Land Measurements, we must briefly examine Vinogradoff's views. He connects the terms carucate, virgate, and bovate not only with an area of land, but with the numbers of plough-oxen necessary for its cultivation. According to a very common mode of reckoning, the hide or carucate contained four virgates, the virgate two bovates or ox-gangs, and the area of land implied by these last terms fifteen acres. When, later on, we shall come to examine the manorial process of agriculture, we shall find at its very core a system of coaration, which not only existed on the servile lands, but extended to those of the lord's demesne. Thus Vinogradoff, fixing the carucate as an area of land ploughable in one year by eight oxen, assigns to the virgate and bovate the respective factors of eight; viz. two and one. Owners therefore of a single ox possessed one bovate in the arable field, and performed their agricultural operations on both demesne and servile land under a process of coaration, which necessitated the yoking of other oxen belonging to their neighbours. Four holders of a virgate or eight holders of a bovate would be thus expected to plough one carucate of demesne land yearly. Now the main objection to this proposition of Vinogradoff's is the significant omission of the Henley writer to thus associate the number of plough beasts with the various land measurements. He does, it is true, include in his computation of the time taken to plough the hide, the number and species of beasts, the system of husbandry and the days in the working year; but he does not touch on the subject of the eight oxen with which we generally associate the plough work of the heavy demesne implement, nor the relationship of the virgate and bovate to any particular number of oxen.

<sup>1</sup> Seebohm's *English Village Community*, chap. ii.

The wide variations of acreage brought to light by comparing the areas understood by these terms in the many manuscripts of the age, would seem to imply that they originated at a time of complete isolation between district and district. Common to the whole nation was the association between certain land areas and the time and materials required to cultivate them; but peculiar to each district was the exact acreage found to be ploughable under the varied circumstances. We may imagine that a tradition might well have been handed down from father to son, and from tribal community to manorial, in which an area of land so many yards long and so many yards wide came to be implied as the average day's work of a plough and yoke of oxen in that district. Varying with the conformation of the ground and the texture of the soil, this unit of all English land measurements came to have a different significance in almost every locality. The legislators of the statute which procured for it one uniform meaning throughout the length and breadth of England had wisely gone to the root of the whole difficulty, and thus evolved order out of chaos. The acre, definitely determined by law to be so many yards of land, at once removed any vagueness about the bovate, virgate, and carucate, each of which henceforth assumed recognised and indisputable areas in the scale of national land measurements. The association of these areas with time and plough beasts would, however, have long outlived the introduction of the statute acre, and this would seem to explain how on certain manors the number of virgates contained by the carucate varied from four to seven, and how, in its turn, the virgate varied between fifteen and eighty acres.

Though there are other difficult terms in the Survey they are insignificant, and we may dismiss them with the briefest reference. The word "terra" refers rather to quality than quantity of land, and signifies either arable, wood, pasture, or meadow grounds. "Leu" is pasture land one mile in length and breadth; but then who is to decide (especially when it is applied to districts remote from London) whether the mile corresponded with the modern distance of 1,760 yards, or contained half as much again? Again, the "Leuca" (or in English

"Lowy"), synonymous with the term demesne, was an unknown area round an abbey, castle, or manor, in which the possessor had peculiar privileges.

Of terms referring to capacity measure we are not left in quite such doubt, for the thrave of Doomsday still contains twenty-four sheaves, or four shocks of straw; the timber was known to contain forty skins; and through our knowledge of the weight of corn in a bushel we are not materially incommoded by our ignorance about the sextary and vasculum. The solius is said to have contained between 216 acres and 180 acres of land, though, as in the case of the carucate and hide, much depended upon whether it was used by Saxon or Norman surveyors.

Almost as confusing are the numerous terms applied in the Survey to the various classes which at that time represented the Landed Interest, and under that head is virtually included the whole population of the kingdom. The necessity for so much nomenclature at a time when two class distinctions, the noble and the slave, seemed quite sufficient, surprises the careless inquirer. But when we recall the exclusiveness and pride of the Norman patrician, the importance attached by his heraldry to precedence, and by his chivalry to honourable descent, surprise vanishes. It is noticeable, too, that the ramifications of distinctive titles is greater below the social surface of nobility than above it; possibly because the lower class, utterly cut off by impassable barriers from the upper, would have sunk into the depths of apathy had not each individual's social advancement been provided for by a host of petty grades and well-nigh meaningless distinctions. Later on in Tudor times, the ambitious youth of the villeinage found the cowl of the monk and the flat cap of the trade apprentice a more suitable covering for scheming brains; but these gateways of egress out of a despised condition of life, always jealously watched, were rarely if at all accessible in Conquest times.

The various classes were entered in the Survey as follows:—

1,400 tenants in capite.	7,000 cotarii.
7,871 subfendarii.	110,000 villanni.
82,000 bordarii.	25,000 servi.

But each of these is further subdivided into numerous minor distinctions whose meanings have often baffled the deepest antiquarian research. Of the tenants in capite, all of whom held lands direct from the king, perhaps the "Barones regis" were the greatest. They were his immediate freeholders, holding areas of land neither determinate in size nor number of fees. There were, too, the "Earls Palatine," whose state was little less than regal; and there were "earls" simply, who lived little less magnificently. They had their own castles, technically termed heads of the barony, which were well fortified and endowed with many privileges, and their demesnes were exempt from the tax of Danegeld. Tenure in capite of the king was twofold; viz. "in capite ut de corona," and "in capite ut de honore;" the first of which signified a tenure originally "feft" by the king himself, out of his own demesne, to hold to the feoffee and his heirs, of the king and his heirs; and the latter came into use when escheats and wardships fell into the king's hands. Many of the "liberi homines" mentioned in the Survey were tenants in capite of the king. A "Miles"<sup>1</sup> might be a baron, in which case he took his name from the military fee and not from the ceremony of investiture with the accolade, girdle, and spurs, by which knights were created. Many of the Saxon thanes became Milites at the Conquest, and are called in the Survey Ministri or Servientes, though it is possible that the term Taini may include men of higher grade than either of the other two.

Next in importance come the subfeudarii, of whom the vavassours take precedence. These held manors or honours of a mesne lord, not immediately of the king. Subinfeudation

<sup>1</sup> The truth is, that the creation called a knight's fee was a gradual process arising out of definite grants by lords to their subfeudarii, whom they designated knights. Speaking generally, the knight's fee is of later date than the Conqueror's survey, but the practice was introduced in Saxon times. These tenures were probably but carelessly looked after until the auxilium militum of the first Henry's time and the later scutage payment drew upon them the tax-collector's eye. Comp. Stubbs, *Constit. Hist.*, chap. ix., p. 284.

had not proceeded to such lengths at the time of the Survey as to require the creation of the term Paravail, which afterwards signified the rear vassal or lowest tenant of the fee. The Miles, also termed homo liber, was generally a subfeudarius, the value of whose fee (if he possessed a whole one) was probably £20, though fees varied in value according to the beneficence of the king or other donors of this class of tenure. We may be sure that an individual, whether he is called homo liber, miles, vavassour, or any other name, was of the seigneur class if he held his lands by sacha and soca,<sup>1</sup> which signified a liberty to try causes, with a peculiar jurisdiction between the lord and tenants, or his men and tenants.<sup>2</sup>

On the other hand, the application of the term socman signified any one subject to the soc or jurisdiction of a lord.<sup>3</sup> He was a free socman if exempted from servile labour. The term seems principally applied to the villeins of the East of England, and therefore probably originated in the Danish settlements. This class was divided into free soccage tenants and villein soccage tenants, according as their services were honourable or the reverse. The former were generally liable to military service, and though free from the calls of ordinary weekly predial service on the demesne lands, were bound to perform the so-called precatrices or special labour tasks at seed time and harvest, like their inferiors, the villein soccage tenants.<sup>4</sup> Another name for these in the Survey is coliberti, of which only a few hundred entries occur.

Arrived at the villein class, we shall not confine ourselves to the various terms contained in the Survey, but shall collate the principal nomenclature discovered in the Manorial Rolls of later years.

Now, the two chief distinctions of this class were the villein regardant, who was said to be annexed to the Manor, and the villein in gross, who was annexed to his lord. It was an im-

<sup>1</sup> *Sac, sacu, or sachu*=litigation; *socu*=jurisdiction.—Stubbs, *Constit. Hist.*

<sup>2</sup> Kelham's *Domesday Book*.

<sup>3</sup> Ashley, *Economic History*, p. 18.

<sup>4</sup> *Id., Ibid.*

portant legal distinction, because theoretically the latter, as his lord's personality, could be bequeathed by will ; but the former, as part of the lord's realty, could only be demised. Vinogradoff<sup>1</sup> has been at pains to show that the two terms represented a technical difference only, and might easily be applied to one and the same individual. Every villein was a villein regardant, but a small minority of the class were chattels of the lord. In the eyes of the Norman lawyer, however, there was no distinction amongst the villeins, who were considered slaves in the Roman sense of that word. The villein of the Norman period was the geneat<sup>2</sup> or ceorl<sup>3</sup> of the preceding Anglo-Saxon era, but even the geneat, without the privileges as well as the obligations of the oath of fealty, was in no sense the chattel of his lord, and was a superior person to the theow. Above that class which was actually enslaved, we may therefore expect to find steps of social rank even under the generic term of villein. Among the terms that do not appear in Domesday Book is Astrier, which seems to have been applied to any individual attached to the hearth of a seignorial homestead. But setting aside such general nomenclature as socman, villein, and Astrier, we come next to a list of terms partly in Domesday Book, partly in Manor Rolls, which distinguish the various grades in the social status of the rural population. Perhaps the highest of any would be the Drench,<sup>4</sup> who seems to have been some privileged tenant, enfranchised either in the pre-Conquest days, or subsequently, on account of certain moneys paid annually as quit rent. Possibly the Saxon prototype of the Drench would have been the huscarl, who was the military retainer of his lord, and in close attendance on his person at board, war, and the chase. The Radmanni and Radchenistres were mounted individuals of the same class. They appear in the records about the same time that military service was most in requisition, and they vanish when the want for such service was less

<sup>1</sup> P. Vinogradoff, *Villeinage in England*, p. 52.

<sup>2</sup> *Id., Ibid.*, ch. v., p. 144.

<sup>3</sup> Stubbs, *Constit. Hist.*

<sup>4</sup> Kelham, *Domesday Bk.*, Glossary.

felt. On the other hand, there is Vinogradoff's supposition<sup>1</sup> that they were riding bailiffs whose duty it was to supervise and check the agricultural operations of predial and boon service. Next in importance were the *coliberti*, who came between the *servi* and *homines liberi*, and who held their freedom of tenure under certain conditions which still detained them in servitude. Chief of the *servi* was the *bordarius*, who was the *gebur* of the preceding era.<sup>2</sup> These villeins were the *Gibeonites* of the manorial community. They held a cottage and a small parcel of land for which they paid rent in such vile services as grinding, threshing, ploughing, drawing water, cutting wood, etc. But they had their social grades, such as the *cotarii*, who paid predial services of poultry or provisions in lieu of some of the more degrading labours enumerated above. To this class we may also assign the various holders of *virgates*, half *virgates*, or quarter *virgates*, who were distinguished from each other under the many local terms of *virgarius*, *yerding*, half *yerdlings*, *majores* and *minores* *erdinges*, *halferdinges*,<sup>3</sup> *ferling-seti*. The *cotarii* were further subdivided into *majores* and *minores cotarii*, the latter of whom could not have been very far removed from the grade of *rusticus* or *nativus*, a class which, without any determined tenure of land, worked at agriculture on the demesne lands, or performed less honourable duties about the manor house.

We next come to a numerous list of synonymous terms, such as *akermannii*, *carucarii*, answering to our description above of the *coliberti*; *operarii*, signifying individuals of the *bordar* class who rendered predial instead of monied service; *gersumarii*, by which is to be understood *bordarii* who paid a fine for marrying their daughters, and many others, which it is not worth our while to examine.

Terms denoting the same social grade varied throughout the country; thus the *landsettus* of the Eastern counties

<sup>1</sup> Vinogradoff, *Villeinage in Engl.*, ch. vi., p. 407.

<sup>2</sup> Id., *Ibid.*, ch. v., p. 145.

<sup>3</sup> Ashley, *Economic Hist.*, p. 54, note 41, and Vinogradoff, *Villeinage in Engl.*, p. 148.

might very well be transposed for the hidarius of the London district, both words denoting the occupier of an indeterminate portion of land.

Lastly, "homines" was a generic term applied by the lord to all his vassals,<sup>1</sup> in much the same sense as a modern colonel applies its English translation to all those below commissioned rank belonging to his corps. It will be evident that the true meaning of most terms thus briefly examined depends greatly on the context where they occur. Thus, for example, the two terms, milites and socmanni, used conjointly, embrace all classes of the kingdom, and distinguish between tenures by military service and those by husbandry; used, however, singly, they allude to two special classes which were far from including the whole community.

It is scarcely possible to scrape together sufficient data for any succinct account of the national agriculture during this period; and husbandry is so associated with the landed interest of later days, that it is almost futile to attempt to realise what an insignificant item it was in early Norman times. The Conqueror brought over in his soldiers' brains as little agricultural knowledge as was contained in those of the Saxon invaders. The latter, however, had the advantage of picking up a few farming hints from the aborigines; but the Normans could have learned nothing they did not know before of the conquered English. Moreover, they did not care to learn, or surely they might have sought tuition from those pioneers of European husbandry, the Flemish, some of whom had formed a quiet colony about this time in Pembrokeshire. The afforestation of fertile lands, the erection of feudal castles, and inter-baronial wars, would at first demand so much native labour, that it is astonishing how any socmen were left to stave off a general famine. Even that vexatious law prohibiting all purchases above a certain amount save in the presence of witnesses, was revived by the Conqueror.

No wonder that the Saxon Chronicle continues to be a dire record of disaster. In 1070, 1082, 1086, and 1087, famine, murrain, and pestilence rang the changes throughout the

<sup>1</sup> Kelham, *Domesday Book. Glossary.*

length and breadth of the land. In 1089 they were reaping their corn at Martinmas, instead of watching the ensuing year's wheat crop shoot up into life. In 1095 and 1096 the produce was evidently insufficient to keep alive 1,500,000 souls, though a few centuries later, viz. 1760, this same country could grow sufficient in one season to feed nearly four times that quantity for four years. In 1098 the excessive wet destroyed the crops on all the low-lying soils. Even a great wind, as in 1103, was sufficient to cause starvation from short supplies, and—so the record goes on—boisterous weather, prolonged frosts and snow, immoderate rains, were ample causes for famine, blight, and pestilence.

In the *Edinburgh Magazine*, vol. vi., 1762, there is a graphic description of a famine year in Henry III.'s reign, purporting to have been transcribed from some ancient record. It begins with the usual celestial phenomena—the moon and stars red, the earth shadowed with "a thick myst of smoke," notwithstanding the north-east wind. The drought begins in March, late frosts almost destroy the fruits of the earth, and the summer's heat completes the destruction. The pastures burn up, and the grass can be rubbed in the hand to a powder. Fleas, flies, and gnats increase and torment the people. Diseases, sweats, and agues ensue. During harvest, murrain devastates the cattle. Norfolk, the fens, and the south country suffer most. Dogs and ravens feed on the carrion, swell, and die, and no one dares eat beef for fear of infection. Young "heyters" and bullocks follow and suck the milch kine in the waste. Apples and pears blossom a second time after fruiting. After four months' drought the rains of August freshen up the soil, and the starved cattle batten and die from overfeeding on the fresh young grass. This is no doubt a typical instance of a season which left the people utterly destitute of means to defy the winter's cold and sterility.

The Conqueror's chamberlain, Richarde de Rulos, lord of Deeping, was one of the few great laymen who devoted his mind to land improvements. He seems to have converted the flooded marsh grounds about the river Welland into the orchards and rich corn and meadow lands which now cover

the Deeping fen. The monks, too, were carrying out their traditional work of industry, and draining or clearing the worthless wastes which pious and superstitious souls from time to time handed over to them as conscience-money.

Protected by the Church, which by a canon of the Third Council of Lateran threatened excommunication against all who molested her servants engaged in this pursuit, the peaceful monks hewed down trees and hacked up roots, drained fens and banked up rivers, marled and manured corn lands, oblivious and indifferent to the harrying of farmsteads and cutting of throats which went on all round them. How the lands of great estates were cultivated we can only surmise.

The same processes, no doubt, went on as have been described in the Saxon period. There was the in-field and the out-field cultivation. There were cowherds, neatherds, swineherds, and keepers of bees. Humfred of Hertfordshire, we gather, possessed 68 animales, 350 sheep, 150 hogs, one mare, and 59 goats. The last mentioned, no doubt, like the vineyards of Middlesex (though termed in the Survey "newly planted"), and those in the Vale of Gloucester, were survivals of the Roman era.

Then as now, there were market gardens at Fulham; then as now, rabbit farming was practised in parts of the country. Owners of beech or oak woods let the pannage for every hog in ten that fed thereon. The Lords of Manors converted the waters of their streams into sources of profit by erecting mills and restricting their tenants to grind their corn there, and even baked the flour at the common fourne before they gave it back in exchange for a money payment. Portions of these old customs still exist under the form of multures in the North of Scotland, and are considered as safe a source of income as the tithe.

Then, as now, there were ash groves, osier beds, young plantations, and hedgerow woods.<sup>1</sup> Such are a few of the statistics

<sup>1</sup> Compare the phrases in the Survey :—

*Silva CXL porc' de pasnag' et de herbagio XLIII porc.*

*Silva minuta.*                           *Silva modica.*

*Silva missa est in defendo.*       *Silvula parvula*, etc., etc.

gleaned from Domesday Book, which, added to the gloomy list of details afforded by the Anglo-Saxon Chronicle, and the insight obtained of Norman warlike laws and tastes, combine to form a picture in which the yellows of ripening crops and the greens of luxuriant herbage are almost invisible amidst the glittering greys of armour and the scarlet stains of blood.

## The Middle Ages.

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### CHAPTER XIII.

#### THE BIRTH OF THE LAND LAWS.

So far our history has been the diagnosis of a country's travail. The pangs caused by no less than five invasions preceded the birth of a mighty nation. Such interior disorders as arose subsequently in class struggles betwixt king and baron; partisan belligerency like the Wars of the Roses; or the bitter religious conflicts of Reformation days, were but the usual infantile ailments of a vigorous babyhood; and the young nation waxed all the stronger, when at length surrounded by the gentler atmosphere of peaceful pursuits, because it had been well hardened by an early nurture amidst the turmoil of constant battle. We have, then, arrived at a period when we can distinguish the encouraging cries of the ploughman to his oxen from the battle shouts of angry combatants and the wails of the widow and orphan. Sweet strains of poetry, learned theses of science, and far-reaching schemes of statecraft begin to flow from the clerkly pens of Englishmen whose fathers' hands had learned but to grasp the sword.

Henceforth the science of agriculture assumes a considerable importance in the economy of the English Landed Interest. It had long done so in other countries where the Teutonic influence had failed to penetrate or exist. As early as the 10th century, Spain, under Saracenic auspices, was the seat of an advanced husbandry, which filled her treasury with an annual revenue exceeding £6,000,000 sterling. For works of irrigation and agricultural improvements of heroic proportions, we have only to trace the same country's handiwork in Peru, where the penguin, for the sake of its guano, was as sacred to

the Inca, as the ibis to the Egyptian; though the motive for the former's preservation was as mundane as that of the latter's was divine.

In the England of the period now about to be discussed, a marked feature of her rural life was the non-residency of the landowners. Most proprietors of real estates were crusading in Palestine, and with them had gone the mighty men of valour, the bellicose and the violent. This separation of the goats from the sheep had left the peaceful, the timid, and the industrious behind in England, where they experienced a freedom from interference so unusual and refreshing, as to cause little wonder at their marked progress in the peaceful arts. The refined and educated influence of the Church, hitherto checked by the combined ignorance and violence of the military party, saw its opportunity, and put forth all its strength in the elevation of the socman and the enfranchisement of the slave. Later on, when the absent landlords returned from that country which, in the forcible language of Scripture, has been described as flowing with milk and honey, they would surely have brought back an increased respect for the husbandman and a deeper knowledge of his industry, even though they had acquired such feelings whilst trampling under foot the crops and fertilising the soil with the blood of those famous Saracenic farmers.

With increased agricultural science grew up fresh legislation. If there is generally an intimate connection between a nation's politics and its agriculture, surely the intimacy between its laws and its agriculture is quite as great! In the first condition of society the idea of property to the savage was confined to a few moveables. The wide tracts of country covered daily in pursuit of food, would in no way inspire his mind with any ideas of possession; nor in the patriarchal or nomad stage could such thoughts occur to the shepherd, as he glanced back on a plain nibbled bare by his flocks before he drove them forward to fresh pastures. But when meat and milk cease to satisfy the human race, and the art of agriculture induces man to sink labour and capital in the soil, he finds a connecting link between himself and it, which seeks expression in the word "owner-

ship." His efforts give him at first a right of excluding others, and then, as they come to produce a more lasting effect, a right of transferring his lands to others when death shall have deprived him of their enjoyment. These first few steps are very similar in all nations. The Teutonic soldier, for instance, was once content with his "munera," or grant of seignorial powers over a certain area of land; then, as his ideas grew, the "beneficia" or life interest in the grant alone would satisfy him. But to hold such a grant for life on condition that the holder jeopardises that life annually in military service, was a land system which could not but breed a nation of cowards. Both parties therefore saw the necessity of the "feud" or extension of the grant to the sons of the tenant. And when man arrives at the difficult subject of land succession, he has reached a stage at which he requires some certain and powerful agency like the law to act for him at a time when he can no longer express or enforce his wishes. The greater and more permanent his improvements to the property he demises, the greater necessity for the law's powerful assistance. That special branch of his industry covered by the term "husbandry" necessitates a special branch of legislation, which is the more comprehensive and intricate the more comprehensive and intricate his husbandry becomes, until in this 19th century there is hardly any improvement known to an English husbandman which does not find its scale of compensatory charges in the agricultural Acts of recent years. It might almost be supposed that a shrewd farmer would be able to gauge a nation's system of husbandry by an examination of its code, and that a shrewd lawyer, reversing this process, could diagnose a nation's laws (at any rate those referring to real property) by the condition of its cultivation. Up to this period all English legislation, so far as it referred to fraud, had been confined to the prevention and punishment of any offences against movable property. The land could not be destroyed or stolen, and trade had been so little practised that delinquencies occurred too rarely in these interests to attract much legal attention. But the time had now arrived when their increased national importance necessitated a fresh class of laws.

If the protection of goods and chattels had engaged the minds of the Saxon lawyers, tenements and hereditaments were now to occupy those of their Norman successors.

From the earliest manuscript collections, mere digests of local customs, to the incomplete attempts by later Saxon kings to codify their jurisprudence, was a fair stride in a right direction. From the so-called Laws of the Confessor to the Charter of Liberties granted by Henry I. was another good step forward; but greater than either of these was that giant stretch which carries the reader to the scene at Runnymede.

There is indeed very little referring to the land in the legislation prior to *Magna Charta* which need arrest our attention. The jurisprudence of the first Henry was a blow to many abuses arising out of feudal incidents. It eased the land of illegal burdens exacted by reliefs, marriages, military tenancies, and fines. His was a reign memorable rather for the enforcement than the enactment of laws. The legislation of the second Henry referred more to the relationship between Church and State than that between Land and State, and far more important to the special subject in hand was the commutation for personal military service by the payment of scutage, than any of the clauses in the Constitutions of Clarendon.

The expeditions to Palestine in the succeeding reign had exhausted the revenues. Excessive taxation had ensued, and, though personal property suffered, the land bore the greater part of the burden. The tax of carucage (Danegeld in fact, under a new guise) imposed a burden of five shillings on every hundred acres of land. The clergy headed a carucage war. The native English, who had made common cause with Henry I. against the landlords, now swelled the ranks of the landed interest.

For a time the sparkle of glorious deeds dazzled the nation's eyes and paralysed its energy. But the succession of a meaner-spirited king brought the crisis to a head; and the throng that opposed John in the Egham meadow, on that sunny June day in 1215, represented every class in the country. Though the native English failed to get their longed-for restitution of the Confessor's code, they foresaw that any restriction

on the king's powers of taxation would benefit them. To his Norman subjects the charter was a preservation of their feudal privileges. Whilst to the king it was a nauseous potion, in which, only by the people's moderation, his royal supremacy was allowed to serve the purposes of a carminative.

Of the sixty-three clauses which it contains, the first part refers to feudal obligations; the second to the administration of justice; the third to constitutional principles; the fourth to cities and commerce; and the fifth to royal exactions. As regards the landed interest, it freed the villein from every other master but his lord; it protected the ward's estates from acts of waste by his trustees; it restricted the incidents of aids to their three original purposes; it reduced their dues to proper proportions; it returned escheated lands to the lords of the fees at the expiration of a year and a day; it exempted their tenants from any services not performable to their former masters; like the modern law of distress, it excepted the contenement<sup>1</sup> of the soldier and artificer, and the wainage<sup>2</sup> of the husbandman from amercements; by the writ of *Præcipe in capite* it protected the local jurisdiction of the court baron; it replaced the king's power of levying scutage<sup>3</sup> by that of the Court of Common Council; it introduced trial by jury, and established an uniformity in weights and measures; it reduced the heavy fine on the nation's agricultural produce caused by purveyance and other royal exactions, so that a king's bailiff could take no man's cow for food without a ready money payment, nor his horses and carts for carriage, nor his timber for building, without consent; and, except where there was a prescriptive right, it stopped enforced labour for purposes of bridging and banking.

Nor was there any possibility for kingly evasion of its terms. Every cathedral contained a copy which was publicly read twice annually. The surrender of London, the custody of the Tower

<sup>1</sup> The contenement was the generic term for any man's trade necessities.

<sup>2</sup> The wainage a specific term for the farmer's dead stock.

<sup>3</sup> Scutage was a new land-tax imposed upon the tenants in chivalry, and not to be confused with the old Danegeld, which still existed under the name of donum or hidage.

by the Primate for two months, and the election of twenty-five barons as conservators of the public liberties, left John no loophole for after evasion. This disturbance in the nation's constitutional law had only been held in solution by the agency of the Crusades. When its great men returned and saw the devastating results of the Saladin tithe<sup>1</sup> and other excessive taxes on their personal or real properties, it only needed the acidity of John's disposition to precipitate matters and cloud what had seemed all clear and limpid before, with the turbid forces of resistance and rebellion.<sup>2</sup>

But besides liability to abuse by royal exactions, there were other weak points in the feudal harness which required legislation. The propensity for alienation, always great in soccage tenures, and now grown great in even military holdings, had already begun to require legal restraints. It was thus checked in *Magna Charta*; it was checked again in the reign of Henry III.; and it was still further checked in the reign of him who has been termed the English Justinian (Edward I.). It has been already mentioned, that by the process of subinfeudation the rear vassals had so lost sight of the original owner as to have ceased to recognise his rights to their escheats, wards, and marriages, which they had come to consider as discharged if rendered to their own immediate alienator. In order therefore to annul the powers usurped by the lower grades of land tenure, such as mesne lords and paravail, the Statute of *Quia Emptores* was enacted, which however, though it restored the superior lord's rights, weakened his power in another direction. Land (at any rate in England, where the vigour of feudalism had become relaxed) had been rendered by the new law as much a subject of commerce as had been allodial land in Saxon times. To the exclusive and haughty soul of an hereditary aristocrat like the Norman, the upstart landed proprietor was a grave shock. That through the misfortunes or excesses of individuals his select circles should be exposed to such intruders as wealthy villeins was intolerable, and induced him to resort to the pro-

<sup>1</sup> This was a tax on personal property imposed by Henry II. in 1188.

<sup>2</sup> For further particulars of *Magna Charta* vide Stubbs, *Royal Charters*.

cess of entails as a means of protection. The statute "De Donis Conditionalibus" gave him public sanction whereby he could entail his estates, so as to free them from the dangers of alienation, rent charges, and forfeiture. This Act not only revived the drooping spirit of feudal law, but fostered such an increasing power amongst the landed interest, that in process of time the great proprietors were not only able to enslave the people, for that they more or less had always claimed to do, but occasionally to menace the throne. It was not till commerce had created a class as wealthy as that of the landowner, with a power over the attainment of luxuries which the heavy burdens on the latter's revenues prevented him from ever enjoying, that the landlord began to shake off those fetters of entail which hitherto he had hugged, and to barter his acres for the merchant's gold.

The power to entail admits a right of absolute ownership, contrary to the principles of the other statute for which Edward I.'s reign is remarkable. If "Quia Emptores" restored the original lord's feudal rights, "De Donis" could apply to his demesnes only. A feud, we have said, represented a grant of seigniorial rights over lands to a vassal and his sons, the fief reverting to the lord at their deaths. But as the vassal grew more independent, and the lord stood in greater need of his class, succession was extended by law to grandsons, and afterwards to descendants *ad infinitum*. We require to be constantly reminded that lands in those times were of small value in comparison with other property, and that therefore the improvements of a vassal were often infinitely more important and valuable than the sites they occupied. Nominally the land might belong to the owner, practically it was his who enjoyed its possession; a distinction which gave rise to the terms "dominium directum" and "dominium utile." The finishing stage in the method of succession was the establishment of primogeniture. The inheriting of all the children equally was the ancient law of the land, and it died hard, if it may be said to have died outright, as long as Gavelkind exists in Kent. In Canute's laws it showed vitality, as also in those of the Confessor. It flickered up into life again in Henry I.'s

reign, where, in instances where there were two or more fiefs, the eldest son had only the “primum patris feudum.” Though in the case of military fiefs it may be said to have received its deathblow in Henry II.’s reign, the eldest son did not become the heir *ab intestato* of soccage fiefs until long after. Only as the distinction between soldier and soeman faded away; as military fiefs became converted into civil ones; as their lords saw better and easier chances of obtaining the rents from one individual than from many; and as the soccage tenants perceived that subdivision of the succession would prevent their families competing in splendour with those of their neighbours, the military tenants, did the old custom of all the sons succeeding *in capite* finally breathe its last. In such violent times it is not to be expected that the right of representation was much looked after or observed. The infant orphan seldom succeeded his grandsire if he had an uncle alive, though on his uncle’s decease he would have preference over his cousins. In fact, succession often depended upon the qualifications of the rightful heir. If he were incapable from infirmity or age, some other relation better qualified to perform military services became the successor. If, too, an eldest son was in possession of a fief elsewhere, he was often excluded from his deceased father’s fief, possibly because he could not well guard over or perform military service for both. This was not a Norman innovation, for instances are forthcoming at a period of English History earlier than feudalism. Thus Edrid, succeeding his brother Edmond I., usurped the English crown to the exclusion of his nephews, Edwy and Edgar, the infant sons of the former, and Edwy succeeded his uncle to the exclusion of his uncle’s sons. Thus also William Rufus, the second son, succeeded to his father’s throne of England, because his elder brother was already provided for by the Duchy of Normandy.

Progress can be also reported in the methods of conveying land, always a difficulty to half-educated nations. The savage, who cannot receive actual possession of any property, has to be educated by symbols into the sensation of possessing it.<sup>1</sup> He

<sup>1</sup> Compare Blackstone’s distinction between corporeal and incorporeal

requires much the same ocular proof of this process as he requires in the adoration of his deity. For the former the symbol, for the latter the idol, supplies his want. The delivery of a shoe by Boaz, a bough by the Englishman, earth by the Scotchman, are instances of symbols used in the conveyance of land. At the time under discussion the proprietary rights over land were so complex that we may excuse the mediaeval Englishman if he needed some such substantial proof of possession as that demanded by the savage. The process of conveying a manor from one individual to another signified that there was a transference of ownership over a small portion of its lands, of seigniorial rights over another and larger portion, and of mixed proprietary and seigniorial rights over a third and last portion. In other words, the new lord obtained the mastership, in a more or less restricted sense, over its people, the proprietorship of its demesne lands, the ownership of certain services and rents on its servile fields, and the joint right with other people to obtain certain necessaries out of its waste.

Antecedent therefore to the institution of Charters how very essential must have been the ocular proof of all this; to furnish which the splendid incidents of a feudal transfer of seigniorial powers over land, with its homage, fealty, and investiture, were purposely rendered as imposing as possible.

The proud bearing of the lord was intended to commemorate his retention of the "dominium directum," just as the humility of the vassal commemorated the limitation of the grant to the "dominium utile" only. But though conveyances by livery were not really abolished till the reign of Charles II., and even then survived in Gavelkind land, the "breve testatum"<sup>1</sup> was often granted at this time by superiors on application. It was confirmatory of the investiture, and paved the way to the later institution of Charters.

There are thousands of these old documents still in existence, but it requires a long practice before any one can decipher the abbreviated Latin and obsolete Norman-English of their hereditaments. The former consist of such as affect the senses, the latter exist only in contemplation.—*Comm.*, Bk. II., c. 2.

<sup>1</sup> Blackstone, *Comm.*, Bk. II., v. 307.

contents. The keepers of our Public Record Office, long familiarised with these parchments, will glance cursorily at the words "Sciant presentes et futuri," with which the ecclesiastic who acted as scribe generally commenced his task, and then look on for the customary abbreviations, such as An., reg., regs., Hen., sec., p., conq., vismo oct., die Jov., pxm., a., f., ss., P. et J., which gives him information of the day, year, reign, and century in which it was drawn up. But if, as often occurs in the case of the smaller charters used in the conveyance of private lands, there be no date, the expert compares the curious handwriting with that of other charters, carefully noting the Anglo-Norman words used, and the nationality of the numerals, until he is soon in a position to venture a shrewd guess, not only of the decade, but very year of the particular century in which the document in question was written. He will also easily translate "hen. t. ten." into the familiar legal phase of "to have and to hold," or "Huj.'s test," into its English equivalent of "In witness whereof, etc."

As this History progresses proofs will be forthcoming from time to time of the importance gradually attained by English Commerce. To a trading people, as Blackstone points out, the writ of Elegit was a signal benefit. It is one more advantage derived from the wise rule of Edward I. It provided for an execution, not only upon goods and chattels, but upon lands; the latter of which were further charged in a Statute Merchant for debts contracted in trade.

## The Middle Ages.

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### CHAPTER XIV.

#### ESTATE MANAGEMENT.

WE have no means such as the lens, used in the analysis of a beam of light, to focus all at once the component parts, which in combination form a history of the land. We are, therefore, obliged to separate it out as through a prism into its several rays, leaving for a time the agriculture in order to fix our eye upon the laws, and turning from these to scrutinise the owner's management. We have watched this last-named process among British nomadic tribes, we have studied it again under some modified system of the Mark, then under the Anglo-Saxon allodialist, and now we propose to study it further at a period when the Norman tenants in chief and subfeudarii have erected their castles or manor houses on the sites of those rude rambling sheds which served as board and shelter for the Anglo-Saxon land proprietor.

The country parish of the thirteenth century was not unlike that of the present day. There was the manor house of the lord surrounded by his demesne, the glebe of the parson, the small estates of the freeholders, the allotments and tenements of the villeins, and the common or waste ground on which all the tenants had rights of pasturage and sometimes of turbary. It is only when one looks closer that a difference is detected between the domestic economy of A.D. 1200 and that of A.D. 1800. Thus the hall of the manor house combined all the purposes of a modern village room, local law-court, dining hall, and estate office; the solar corresponded with our 19th century drawing-room ; and the dormitory represented that sleeping space

which is now occupied by a dozen or more separate bedrooms. A glance directed through any of its mica-glazed diamond-shaped lattices would have disclosed wider differences still. Instead of costly Sir Joshuas and Gainsboroughs which deck the walls of a modern hall, sacks, scythes and reaping hooks would be the chief mural decoration of an ancient manor house ; instead of the warm yielding pile of Turkey and Indian carpets, its floor would be strewn with rushes; and instead of the luxurious plush-covered lounges of a modern reception room, the solar furniture would be rude stools and benches stuffed with wool or covered with beehive-fashioned straw cushions. Closer scrutiny, too, will show strong dissimilarities between the various classes of the landed interest and their occupations then and now ; between Norman tenants in chief and modern noblemen, subfeudarii and 19th century squires, free tenants and tenant farmers, villeins and day labourers, servi and (be it written with shame) the live stock of a modern farm.

But let us examine in detail the various branches of estate management, for we have arrived at a period when the manuscripts of Walter of Henley,<sup>1</sup> of an anonymous writer on husbandry, of another anonymous writer on the duties of the Seneschal, and Richard Grossteste's laws, afford us ample information on the subject. In times of bad roads, distant and unfrequent markets, and dangerous travelling, it was the policy of an owner to make his estate as self-supporting as possible. Sales of produce were therefore rare, and his stock of money small—circumstances which induced him to employ the predial rather than the money-paid services of his labouring dependants. The available amount of vigorous muscle was an important consideration, and compelled him to place strong restrictions on its exodus from the Manor. Anything that tended to diminish the numbers of his workpeople tended to diminish his income and the market value of his property. Therefore, even their education, much more their choice of a profession, were subject to his consent. Depletion of his labour supply, by recruits enlisted in the ranks of the clergy or apprenticed to town trades, was never permitted

<sup>1</sup> Walter of Henley, pub. by Royal Hist. Soc. Introduction, p. xiii.

to exceed reasonable proportions. It will be also evident that times of tumult, such as the Norman Conquest, and years of disease, such as those of the Black Death visitation, quickly brought down prices in the real property market and caused depression and discontent.

As soon, however, as the country was opened out by better roads, and the increase of a trade population enhanced the value of farm produce offered at the public fairs, the hire of labour for money replaced that system of predial service, which had not only caused great expense to the lord, but great inconvenience to the villein. Thus we shall not be surprised to find, as we dip deeper into the subject, that the former was compelled to keep a large staff of estate officials, whilst the latter was immensely hampered in his husbandry, especially if a heavy or unkind soil required the employment of every seasonable hour for its proper cultivation. Though the whole community of the villeinage was responsible for the shortcomings of the individual, this we may be quite sure did not altogether prevent delinquencies, however sharply boon services were scrutinised.

Before we examine the duties of the various estate officials it will be best to glance at the distribution of the land.

Let us then ascend in imagination an eminence whence all the estate can be discerned, and gaze around on the busy scenes of Lammas day.

The rough waste yonder, partly wooded partly wild grass, is dotted about with sheep and cattle in separate companies, each attended by its respective shepherd or neatherd. The proportions of these flocks and herds vary from the few young steers of a humble villein to the fine head of stock belonging to a vavasour or military tenant. Occasionally, amidst the scrub, a glimpse is caught of some errant porker, after whom darts the swineherd's dog, eager to restore him to the rest of his fellows, who are feeding on the pannage of those beech trees. Down in the marshy ground is a rude pigsty, where, in severe weather, the swine are sheltered, and even now some few weakly members or farrowing sows may be lying about inside. The various neat and swine herdsmen are hardy fellows, sleep-

ing each night with their charges in whatever shelter their ingenuity has been able to construct. This then is the common ground, where the villagers' cattle feed, "horn with horn,"<sup>1</sup> and just before we turn to look elsewhere, the eye is caught by a flash of bright colours among its trees, then a heron flaps slowly upward, and a mounted hawking party riding into the open, let loose their falcons on the prey. These no doubt are the inmates of that manor house over there, which is easily distinguishable from the other neighbouring village tenements on account of its superior size, and surroundings of garden, fishpond, pigeon cote, grange, and rabbit warren. Around it lies the arable land of the demesnes, on which the boon labourers are just finishing harvest. The seneschal rides about supervising the work, and the provost flings the last armful of the crop up to the waggoners with a gesture of relief, while the large crowd of boon tenants<sup>2</sup> can scarcely refrain a cheer. They, poor fellows, have been on short commons the last month or so, and are eagerly looking forward to the annual replenishing of their diminished stores.

On another spot down by the river the eye lingers to note, even thus early in this glorious August morning, the milch cows greedily browsing on the unwonted feast of meadow aftermath. Busy groups of people under the watchful eye of the hayward are removing the temporary fences, and it is not too late in the season for us to detect the rougher herbage where these temporary fences had divided the growing hay into those separate doles for which the community earlier in

<sup>1</sup> There were four kinds of common rights—common of pasture, i.e. cattle feed; common of piscary, i.e. catching fish; common of turbary, i.e. digging turf; common of estovers, i.e. cutting wood.—Blackstone, *Comm.*, Bk. II., ch. 8. Common appendant was the right to put beasts of the plough or such as manure the ground on the lord's waste; common appurtenant was the right to put other beasts there, such as hogs, goats, etc.—*Ibid.*

<sup>2</sup> This boon service is not yet extinct. There is a book kept on an estate in Lancashire where the tenants still perform certain boon services. The book records the practice.

The custom of harvest labourers in parts of Norfolk to go round at the completion of their work and shout largess at all the better classes of houses, is a survival no doubt of this period.

the year had balloted. Those numerous small ricks fenced off from the mouths of hungry cattle, inform us that here it is the manorial custom for the haycrop to be allotted to the various claimants of the villeinage, whereas one great stack would have shown that the lord claimed the crop and his tenants only the aftermath.

Running our eye along the “ings” on each side of the river, it arrives at the mill, which probably belongs to the lord, unless, like that of the Prior of Holy Trinity in Wallingford, it is held in frankalmoigne by the vicar, the round tower of whose Saxon church dwarfs the manor chimneys and even the clumps of trees on his glebe land.

But our eye is now attracted to the “wistas,” those narrow lengths of cultivation on the “servile land” in which the yellows of overripe wheat and barley crops form a strong contrast to the sepia colouring of the fallow ground. This is the famous two-field system of husbandry, shortly to give way to the better trinity system, when the lines of yellow and brown tracts will alternate with the russet green of ripening pulse crops. The owners of this portion of the manorial produce have hitherto been too busy at boon service to find an opportunity for their own harvest operations; but as soon as the lord’s corn is in stack they will be hard at work, knowing that each day’s procrastination postpones the hour when their half-starved live stock on the waste shall be allowed to roam at will over the stubbles and fallows of the commonable land. As the breeze waves aside for a moment the overshadowing corn, we catch a glimpse of the rough herbage of the untilled “balks” and “butts” which respectively divide and terminate these strips of cultivation. Those odd corners of the arable fields which are so difficult to plough, are called either crustæ, pightels, gores, fotheres, pykes, no man’s land, or Jack’s land, and are occupied by individual tenants. Roughly gauging areas with our eye, we are able to proportion the land in villeinage and that of the demesne at respectively two-thirds and one-third of the whole. A few of the better dressed tenantry, possessors probably of whole virgates in the commonable land, appear to be comparing in despondent tones the probable yield of their

crops with that just harvested on the lord's demesne. An official, most likely by his dress from the neighbouring monastery, has attached himself to the group, and is estimating with an expert's eye the probable value of the rectorial tithe. Here and there amidst the tenants' corn appears a strip of stubble, denoting those parts of the servile land which form a portion of the demesne.

Adjoining the arable ground are one or two superior-looking pastures, technically known as "hams," on which cattle or sheep can be finished off and rendered prime for the butcher.

One remaining touch completes the picture. Far away on the distant horizon a sharp eye will detect the baronial banner fluttering from the highest tower of the tenant-in-chief's castle. The Lord of the Manor has been there many a time to render feudal service, for powerful though he be here, he is the vassal of the great noble yonder, whose warder's pikes and moat waters are just now reflecting the glittering sunlight.

But if (still in imagination) we allow ourselves to convert those distant battlements and turrets into the towers and spires of a stately abbey,<sup>1</sup> the scene around represents the industry and pursuits of Church vassals. Seldom liable to military service except on special occasions, and holding their lands for a small quit rent or moderate proportion of the produce, they could pursue their husbandry without those interruptions from boon service and annual calls to arms in which the tenantry of the lay barons employed more than a moiety of their days. Their infield (as the permanent arable lands were termed) would therefore display a heavier yield of oats and bere in the alternate husbandlands or raines between the riggs than the crops our fancy pictured in the servile lands of the manor; and even the "outfield" would show here and there temporary cultivation, where some more than usually industrious "feuar" had chosen

<sup>1</sup> It will be noted that in order to bring in all the terms in use, the former scene has been imagined in the south, this latter in the north of England, where infield was used instead of common field, spence instead of solar, raine and rigg instead of dole and balk, etc. The term infield must not be confused with the Saxon term inland. The former was the common arable field of the community, the latter the Saxon lord's demesne lands.

to break up the virgin soil of the common sheepwalk. Amidst the general lawlessness and disorder of the age, the Church vassals were considered a privileged class and were seldom molested, though their villages were fortified by occasional towers whose overlapping battlements and advanced angles became hastily manned by sharp-shooters in times of peril. Then, even if some daring intruder survived the heavy cross fire of quarrels, the nail-studded oaken doors defied his severest assault. Cottages thus fortified belonged to the principal families of the township. They were miserable dwellings at best, erected at the occupant's expense and paid for by some yearly nominal rent, as an acknowledgment to the lord that they were there on sufferance. Except the principal room, used for every kind of house work, and called the "spence," there was no place worthy of human habitation. A rough ladder led to the sleeping compartment, which was a cramped space jumbled up with the roof timbers. The inmates were contented enough if but allowed to gather in unmolested their turf and firewood from the outfield and their bread and ale from the infield. These, together with the salted meat of the steer killed each November, an occasional pigeon pasty, a capon now and then, a fish or two from the river, and a cabbage out of the garden, sufficed to keep body and soul together. Nor did they grudge their masters the venison joints, the wafers, flamms, or, pasty meats which they heard, perhaps from their friend the abbey kitchener, were served each day in the great oak panelled refectory. Much less did they grudge or withhold the annual quit rent, which was paid all the more cheerfully and regularly both because superstitious piety shrank from withholding the Church's dues, and memory recalled many a kindly service emanating from their reverend landlords' monastery.<sup>1</sup> Compared with the tenants of a lay barony, even setting aside their immunities from military service and molestation, these Church-land tenants had far the best of it. They had resident and indulgent landlords, whose education and calling would not allow of

<sup>1</sup> Sir Walter Scott's *Monastery* contains a very faithful picture of what has just been roughly painted in the foregoing pages.

harsh treatment, much less brook the idea of serfdom. It was an idealised form of feudal tenure, far in advance of the times, and possibly nearer to what was passing in Charles Kingsley's mind when he wrote to Sir Charles Bunbury his objections to *la petite culture* and eulogised feudalism.<sup>1</sup> But let us descend from the eminence and inquire closer into such matters as the unaided eye cannot convey to the brain. The seneschal galloping off to some other manor could answer our questions; but he is too busy to rein in, and we must be content with some other official. He is an important man, that fast disappearing horseman, and his day is quite as fully occupied as that of any modern estate agent, of whom he is but the prototype. A knowledge of law is essential for one who has not only to advise the bailiffs beneath him, but make his periodical rounds of inquiry into the rents, services, and customs of the various manors under his supervision, or examine the franchises of courts, lands, woods, meadows, pastures, waters, mills, and all other such matters liable to be withdrawn or withheld without legal warrant.<sup>2</sup> He has, too, to keep a carefully surveyed plan and reference of the demesne lands, containing the acreage, cultivation of each field, and other particulars whereby he can check the accounts of seed furnished by the provost or hayward, estimate the exact number of ploughs necessary for cultivating the arable lands, at the rate of one implement per nine-score acres; deduct from this sum the acreage ploughable by boon, predial, or money services, and enumerate the head of live stock which the meadow lands could carry after deducting the acreage necessary for the manor hay. Similarly he will refer to the Estate Roll for the acreage and capabilities of the common lands available as pasturage. He has also to look sharply after the farm management at each manor he visits—for one of his duties invests him with powers of enforcing compensatory fines for bad husbandry, wrong cropping, and "neglect of guard" over the live stock. Even the character of the bailiff and other foremen are not allowed to escape his watchful eye. All this is so like the modern duties of a land

<sup>1</sup> *Vide Letters and Memoirs of Charles Kingsley*, by his Widow.

<sup>2</sup> *Seneschancie*, pp. 84, seq., Translation of Royal Hist. Soc.

agent that the reader will scarcely credit that the information is contained in a thirteenth-century MS. Long ages before the Georgian legislation on the powers of Factors, and Addison or Chitty had written their learned treatises on the Laws of Contracts, the seneschal's limits of power had been clearly defined. Thus we read that he could not dismiss any servant of his lord who was kept and clothed by him, without his special orders; and any dereliction of a bailiff's duties had to be reported to the lord in council. Nor could the seneschal sell wardships, marriages, or escheats, nor dower any woman, nor take homage or suit, nor sell or make free a villein, without special warrant from his employer; a proviso which savours strongly of the later power of attorney, whereby alone the limited authority of agency can be legally enlarged. In the words of this early writer, "the seneschal ought not to be chief accountant for the things of his office, for he ought on the account of each manor to answer for his doings and commands and improvements, and for fines and amerciaments of the courts where he has held pleas as another, because no man can or ought to be judge or justice of his own doings."<sup>1</sup> But the great baron himself, if fond of a rural life, would sometimes superintend his seneschal's management.<sup>2</sup> He had his own peculiar Estate Roll from which that of the seneschal's was taken, and even the heads of each manor possessed copies of those portions referring to their particular bailiwick. If the baron were ever in doubt (and he must needs have often been so in cases where his manors were far off and seldom visited) his resource was the king's writ, which empowered him to employ the sworn evidence of twelve men chosen out of the wisest and most loyal freeholders and villeins, who inquired into the difficulty and embodied the results of their survey in the roll. This purported to supply information concerning the customs, usages, services, franchises, fees, tenements, and areas pertaining to all the parcels of land which composed each manor. But besides this, there was another kind of roll which contained the names and description of each manor, both the actual and possible number of its ploughs, the

<sup>1</sup> *Seneschancie*, p. 87.    <sup>2</sup> *Robert Grossteste*, p. 121.

acreage of the arable and meadow lands, and the head of live stock existing as well as capable of existing on the pastures. And here is perhaps the first<sup>1</sup> allusion to the coming subdivision of the business of the Court Baron into several separate assemblies.

It is evident that the seneschal could never find time among all these multitudinous engagements for that close and detailed supervision which the husbandry in each manorial demesne demanded. It was the bailiff, a man selected out of the villein class, who performed this duty, acting on his own responsibility in all trivial transactions, but looking to the seneschal for advice on an emergency. The former was the servant of the subvassal who inhabited the manor house, or in cases where the manor was kept in hand by the tenant-in-chief, the bailiff himself often tenanted the manor house and, like the seneschal, was the baron's officer.<sup>2</sup> The early rising and late attendance entailed by the supervision of yoking and unyoking each day, the management of the live stock, and the superintendence of all farming operations, are so similar to a modern bailiff's duties as to scarcely require a passing glance. But besides these duties he had to estimate and write down the acreage ploughed, reaped, or harvested by the predial service. He was not allowed to bake or brew without his lord's warrant, nor to entertain a visitor on the manor except at his own expenses.<sup>3</sup> His sole perquisites were straw, hay, and firewood. His task was to keep a watchful eye over the contents of the granges, and prevent the removal of straw, hay, or fern, which had to be consumed on the manor either in the form of forage or as manure. A curious rule restricted him from purchasing the winter seed-corn without the lord's or seneschal's warrant by writ.<sup>4</sup> The spring seed, however, might be sown from his own store, unless "cheapness prevented him by order of the writ," a regulation which seems to imply that his purchase of seed-corn was limited to a certain market price, above which he might not go. What little produce had to be sold in fair

<sup>1</sup> *Vide chap. xxx. of this book.*

<sup>2</sup> *Seneschancie*, p. 91. Translation of Royal Hist. Soc.

<sup>3</sup> *Id., Ibid.*

<sup>4</sup> *Idem*, p. 98.

or market could not be purchased by any of the farm servants. Every death among the live stock involved an official inquest before the bailiff was allowed to sanction the flaying of the dead animal. It is quite possible that he had to produce all skins periodically before the seneschal, to satisfy him respecting any deficiencies in the numbers of the herd or flock, and explain the causes of death. Possibly, too, these skins had to be kept for estimating the Church's dues from mixed tithes, as in an ensuing paragraph the bailiff is warned that he should attend "the annual selling and titheing of the lambs, and the titheing of the wool and skin, because of fraud."

It seems to have been customary for the bailiff to call in at three stated intervals of the year the services of that person who corresponds most to the modern veterinary surgeon. The "disease of May," and later on when mortality from this disease set in, and again after Lammas were the periods fixed. The bailiff's policy was of course to dispose profitably of as much sheep and cattle as possible before the winter. About August, therefore, he began to cull his weaker animals and fatten them off on the best pasture available. These would be sold off as soon as fat. From then till Michaelmas he was gradually selling off, killing for home use, or salting as a winter meat reserve as many as were not likely to survive the cold and bad feeding of the ensuing six months. To help him to carry out these many duties there were the provost<sup>1</sup> and the hayward. The former was the smartest hand in the township, and was chosen annually by the community of villeins.<sup>2</sup> He superintended the early rising and behaviour of the court servants, the cultivation of the demesne lands, the proper attendance on the various herds and flocks, and the quality and excellence of the dairy produce. He kept accounts of the services of the boon

<sup>1</sup> *Seneschancie*, pp. 97, seq.

<sup>2</sup> The post of provost or reeve was not, however, an envied one; and notwithstanding his partial exemption from boon service and perquisites of extra land, meals, and horse keep, the lord had often to insert in the Manor Rolls a clause proving the legal liability of all holders of virgates or half-virgates to be elected to the post.—Ashley, *Economic History*, ch. i., p. 12.

tenants, whether worked out or commuted, and handed them periodically to the bailiff.

Unlike the provost, the hayward was permanently appointed, but otherwise the duties of the two men were very similar. It seems however probable that the provost, who is further on called the lord's chattel, was a kind of champion to the boon tenants, representing their interests as opposed to those of the lord, which the hayward looked after. For this reason the former supervised the work of the court servants, so that their deficiencies should not add to the predial services of the class he represented.<sup>1</sup>

The cowmen slept in the stalls with their charges, the ploughmen with the oxen, and the waggoners with their horses. All these men were closely watched, to prevent their absence from duty at markets, wrestling, wakes, or taverns.<sup>2</sup> The waggoners were strictly forbidden to ride their horses, or in any way maltreat them; and the shepherd's office was considered such a position of trust as to require pledges for his good and faithful service.<sup>3</sup> Besides the remaining rank and file of the labouring class we may briefly allude to the messor, or chief reaper, and to that body of radmen or riding bailiffs which Vinogradoff has touched on, but about the existence of which we have been somewhat sceptical in an earlier chapter.

An interesting account by Professor Thorold Rogers in his *Six Centuries of Work and Wages*,<sup>4</sup> introduces us to another estate official, the scribe or clerk, who probably led an itinerant life travelling from estate to estate whenever his services were required. His busy time was no doubt between July and Michaelmas, the most usual period for an annual stocktaking in the 13th century. Under the direction of the seneschal or bailiff he drew up on parchment the lord's profit and loss and capital accounts. The names of the estate and the receiver of rents, and the date of the king's reign were engrossed on

<sup>1</sup> *Seneschancie*, Trans. Royal Hist. Soc., p. 108.

<sup>2</sup> *Id.*, *Ibid.* pp. 101, 115.

<sup>3</sup> *Id.*, *Ibid.* p. 115.

<sup>4</sup> *Six Centuries of Work and Wages*, pp. 49 *sqq.*

the head of the roll, both front and back. The first entry was the arrears debited to the bailiff, then followed the rents of assize, i.e. fixed payments of the tenants; next the rents of the grinding and fulling mills, the corn and stock sales, commutations for labour rents, sales of produce and wool, manorial fines, heriots, pleas of court, and sundries. The expenses included bad debts, charges payable, cost of ploughs, carts, corn, stock, dairy utensils, etc., building charges, wages, and extraordinary items. Lastly appeared the sums paid to and for the employer. The back of the roll showed the valuation of the stock carried over from the preceding Michaelmas and compared with that taken a twelvemonth later, and any balance to the good was debited to the bailiff's list of liabilities.

The auditors were often ecclesiastics, who performed all the business required of the modern representative of this class, but in addition had to go round the granges and check the figures in the bailiff's stock account, even searching out omitted items of produce and recounting the skins of dead stock.

It was customary to close the granges after harvest so as to admit of the usual stocktaking before the visit of these officials. A prudent landlord in such times of periodical famine was wont to reserve a whole season's corn produce in his granges as a resource during unfruitful years, in this way following out the example set by Joseph in Egypt, though possibly incurring the people's curse which Scripture imputes to him that withholdeth corn. The yearly visit of the lord, to examine the accounts, and his attendance, together with that of the whole population, periodically at the court or homage leets in the manor hall, was the little that as a rule was seen of the great landowners of this period; but, as subinfeudation increased in proportions, the baronies became subdivided among the rear vassals, who no doubt by their permanent presence, save in rare instances, rendered obsolete the office of seneschal and the bailiff's occupancy of the manor house. The change was so gradual as to have escaped the notice of historians; but it cannot be doubted that the system which it introduced of

smaller estates and resident landlords, instead of great provinces managed by paid service, was largely beneficial to the subordinate classes of the landed interest.

This alteration relegated the legal portion of a seneschal's duties to the family attorney (a profession which soon after became very crowded), and the more practical duties of estate business to the bailiff, who grew to be regarded as the land steward, while the hayward vanished only to reappear as bailiff.

Before we take leave of the seneschal it would be interesting to inquire how these experts were trained. One is left to wonder whether the office, like that of bailiff, was hereditary, or whether the occupation of the modern "mud pupil" can boast of a Norman origin. It must be borne in mind that the seneschal was more like a nineteenth-century Scotch factor than an English estate agent, for he combined the three professions of lawyer, banker, and steward in his single calling, subjects which require a life-long study in order to insure satisfactory results. He was probably a polished and courteous, if somewhat stiff official, reflecting much of the chivalry and exclusiveness characteristic of that exalted class which called for his services, and as apt to catch the tricks of manner, and idiosyncratic touches peculiar to his particular employer, as is any my lord's "gentleman" now-a-days. Let the reader, however, bear in mind that, save in this one trait, there can be no comparison between the real gentleman who performed all the dignified duties of a proconsulship over his baronial master's lands, and the serving man who nowadays answers his master's bedroom bell and blacks his master's hunting boots. In Canon Bridgeman's *History of Wigan*,<sup>1</sup> he gives a list of highborn persons who held the coveted office of bailiff and seneschal over the parson's manor; and in 1551 Sir Thomas Langton, the Lord of Newton, acted as chief steward, with three or four heads of good county families officiating as deputy stewards under him. Though in this

<sup>1</sup> G. T. O. Bridgeman, *History of Church and Manor of Wigan*, p. 127 (note).

case the sentiment of honouring the Church may possibly have been mixed up with the more mundane desire for a lucrative office, there is no doubt that as a general rule some very good blood flowed in the veins of those who filled this post on the great mediæval estates.

## The Middle Ages.

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### CHAPTER XV.

#### LIFE AND WORK ON THE BARONY.

On the principle of giving precedence to whom precedence is due, let the rural life of a grand seigneur commence this chapter. We will then choose as a typical instance one who takes an interest in estate affairs, recognises his onerous duties, and is naturally disposed to a peaceful country existence. In order to realise most thoroughly the features of such a domestic life, let the reader assume the *rôle* of some honoured guest who has been invited for a space to share the magnificent hospitality of a baronial castle. Met at the door by porters, ushers, and marshals, he would at first feel bewildered at the host of ready hands outstretched to relieve him of his mails and travelling attire, until the seneschal, in no way to be confused with the already-mentioned estate officer, advances to his rescue, and leads him away to prepare a hasty toilet for the great midday meal in the hall. Passing over the preliminary introduction to his host, the reader must imagine the scene of repast, with its great high cross table at present unoccupied, and the baronial freemen, consisting of knights, chaplains, and gentlemen, arranging themselves at the two side tables, which were placed at right angles to the raised dais. These gentlemen are all neatly clad in the baronial livery, and too carefully looked after to appear in ragged tabards, soiled herigauts, or imitation short hose. After they are seated the crowd of grooms files in and sits lower down, rising and leaving together at the conclusion of the meal. Under their table might be observed the leathern jacks of ale, and upon that portion allotted to the gentry the wine bottles, while under the lord's

are both vessels of wine and ale, a fashion as rigidly adhered to then as is the modern arrangement of serving the various drinkables to each guest in turn. The lord now enters, and takes his seat at the middle of the high table, with his guests and family on either side of him, and two overseers superintend his repast. Then the pantler bearing the bread, and the butler the cup, march up the hall together, and the marshal tells off three valets to serve the high table, and two others the rest of the diners, with drink. Each course is brought in by the servers from the kitchen, and preceded by the seneschal, who, while not thus engaged, stands in the centre of the chief hall. Other servants take meats to the carvers, and, before attending to the wants of his own particular table, the lord watches their service until these have been placed in the hostel. His dish is then heaped up with viands, and constantly refilled for distribution right and left. The hostel is served with two large and full dishes of meats for the grooms and two lighter dishes for the freemen; but at supper one less substantial dish with cheese suffices, unless the addition of unexpected guests necessitates a larger supply. This is all the food allowed, except in alms; for suppers and dinners out of hall are as a rule prohibited.<sup>1</sup>

A lord of the type selected would no doubt spend the greater part of his time in travelling from manor to manor. Once or twice a year he would probably visit the great fairs of the kingdom, in order to buy such necessaries of life as were not produced on his lands. Grossteste, Bishop of Lincoln, who wrote a treatise on the duties of great landowners, advises my lord to stay only short periods at each of his manors, lest he leave them in debt, from which it may be inferred that everything was home-grown and home-made, except such commodities as wine, wax, and robes, the two first of which could be bought at St. Botolph's Fair, and the last-named at that of St. Ives.

Turning next to the occupations and diet of the working classes we are confronted with a formidable task. Only those in a position to collect together the contents of many Court

<sup>1</sup> *Vide Les Reules seynt Roberd, Robert Grossteste.*

Rolls, and compare custom with custom, tenancy with tenancy, rent with rent, and service with service, could accurately inform us what were the commonest every-day duties of a villein on the thirteenth-century manor. We should like to know something of the value of land, expressed either in money, produce, or service; how and where the various rents were rendered, and many other particulars, which custom of the country, the Estate Rental, and other office archives would nowadays afford the student of estate management. But without proceeding far into detail, one is able to describe in general terms the nature of the various holdings, the classes of people who occupied them, the way they farmed, and the daily routine of their life.

We must not, however, expect to be able to unravel the duties and occupation of that numerous class of agriculturists to which we were introduced in our examination of Domesday Book and later Manor Rolls. Besides names already familiar to us from the examination made then, we might collate from the different Manor Rolls of the period a longer list still, such as Lundinarii, Terendelli,<sup>1</sup> etc., signifying certain subtle gradations of rank, and perhaps only explicable by some one well posted up in the customs of the time and locality.

We can, however, reduce the necessary list to a few simple and general distinctions, according to the area of land occupied by each individual agriculturist of the mediæval manor. The arable lands held in villeinage were split up into virgates and half virgates for purposes of distribution among the farmers of the district. The villeins who held whole virgates head the list, after them come the holders of half virgates, next the bordars holding a cottage and one or two acres, and last the servile labourers.

As to their various occupations, we shall find very little different to what the *Rectitudines Singularum Personarum* of an earlier period would lead us to expect. There were the days of each week set apart for predial service on the lord's demesne, and the extra work or precatioñes at seed-time and harvest on the same lands. The rest of the year's work was

<sup>1</sup> *Vide* Ashley, *Economic History*, chap. i. (note 41).

taken up with the cultivation of their own crops on the servile land. Now a virgate or half virgate was not in itself sufficient to employ the time throughout the year of one yoke of oxen, and we may therefore conclude that the heavy ploughs of the demesne drawn by eight oxen, and the service of the averagium, or work for the lord's carts, were performed with the oxen belonging to the villeinage. Even the more important implements in use on the servile lands were probably the property of more than one individual. Occupiers of less land than a whole virgate would scarcely possess more than one plough beast, so that the system of cultivating the lands in villeinage would still take that form of coaration which we have before suggested was the custom in the tribal era of common field husbandry.

The principal meals of the villeinage were dinner at 9 a.m. and supper at 5 p.m. This class fared no doubt better in seed-time and harvest, when the precatiores and other miscellaneous services on the demesne lands helped to eke out their own private supplies of food. In fact, the regular weekly routine of predial service never left them wholly dependent upon their own food resources ; and there must have been times when the meat broth, bread, cheese, and drink, which was apportioned out according to each manorial custom on boon days, would be the greatest godsend to the half-starved victims of a famine year. To take an example, the daily allowance at Hawstead included two herrings, milk from the manor dairy for cheese making, and a loaf of bread, fifteen of which were made from one bushel of wheat. Much of the corn grown by the lord went in this way. It was the wages of every waggoner, ploughman, and neatherd on the demesne, each of whom received about one quarter every two months. They had also land and stock of their own, and even the shepherd possessed his special sheep. On the Wolrichston Manor, besides the two herrings as a daily harvest allowance, there was a pig for subdivision among all the farm labourers ;<sup>1</sup> and on many other manors they were feasted after harvest, even being allowed to bring a friend. These rights to sustenance and allotments of

<sup>1</sup> Rogers, *Prices and Agriculture*, vol. i., p. 17.

victual or provision for maintenance went by the legal term of Corodies.<sup>1</sup>

Both villein and serf fared, lived, and died very similarly. Existence from harvest up to the long nights and cold blasts of winter must have been fairly bearable. There was more milk than usual, eggs, and a fowl now and then, such garden greenery as nettles, cabbages, and onions, and a warm early rising and late setting sun, all of which helped to keep body and soul together. But during the long, dreary, dark winter the sufferings and discomforts of the majority must have been considerable. The poor tenant came home on dark winter nights to his draughty damp mud hut, with its glassless openings for light and chimneyless holes for smoke, only to retire at once to that straw kennel which served as bed, where he shivered under the sheepskin coverlet till it was time to grope his way out and resume work. Many a dark hour before day-break must have brought home to some poor pious fellow the magnitude of that sacrifice which had devoted a candle to the shrine of his patron saint. Then, as the corn store grew less, and the long diet on salted viands began to threaten his emaciated frame with scurvy and leprosy,<sup>2</sup> there is little wonder that he constantly transgressed the forest laws, stringent though they were, on the chance of capturing a plump partridge or well-flavoured hare. One need not doubt, too, that the manor grange and larder were then as now open to the genuine cry of distress, and that many a famine-stricken household owed relief to some Lady Bountiful, the progenitrix of a long line of dames which will never die out until the landed gentry are themselves extinct.

The infield, or *terra villanorum*, where grew the crops on which depended a man's very subsistence, must have been watched with hopeful or sickening expectation in proportion as the April showers or cold May winds respectively freshened or withered the young corn. There is little wonder that the utmost care was taken to insure absolute equality to all, both in the contour of the land and variableness of the soil. The

<sup>1</sup> Blackstone, *Comm.*, Bk. II., chap. 8.

<sup>2</sup> Rogers, *Six Centuries of Work and Wages*, p. 96.

three divisions into which the whole infield was plotted out were further subdivided into ten acre "shots," "furlongs," or "flats," and again subdivided into one acre strips, locally known either as rigs, ox gangs, dales, balks, landshires, etc., which were fenced off between seed-time and Lammas Day, after which they were thrown open to the community's live stock.

The system of Lammas lands is only suitable for the most forward soils and localities. Though the Julian Calendar was in use until superseded in 1752 by that of the Gregorian system, and old Lammas Day was therefore the 12th instead of the 1st of August, we are forced to conclude that the harvest was seldom garnered in the north before, and often delayed in the south to September.

The date for the resumption of common pasture rights over the infield was frequently therefore postponed. Thus the records of St. John at Hackney contain entries such as the following : "July 26th 1692. Proprietors of the commonable lands allowed ten days to carry off their crops on account of the wett." Again in the year 1703, memorable for the great storm which reduced all Queen Ann's subjects to the fald stool and fast, a similar postponement of fourteen days' grace after Lammas is noted in the same records.

Every claimant was allotted strips in each of the three fields, and the very strips were dotted about all over, in order to insure for each not only some fallow ground yearly, but some good as well as indifferent soil. The practice too of allowing the villein either a share of the meadow hay crop or pasture on its aftermath enabled him to fatten his cattle and milk his cows long after that period of the year when the herbage of the waste had ceased to nourish them. These plots or doles in the meadow pasture were balloted for as late as the present century in some of the Midland counties.

The whole system was the best under the circumstances ; but when the introduction of root crops altered the character of English husbandry, the Lammas lands became an intolerable nuisance.

Such generally was the life and work of an English manor

during the Middle Ages. For the sake of details let us now take an example. On the Manor of Cuxham<sup>1</sup> we find that the holder of a military fee would have to pay about 40*s.* annually as scutage, that a free tenant would be paying about 1*s.* per acre for a portion of his land, and a pound of pepper, valued at 1*s.* 6*d.*, for another of nine acres. A householder would be under an obligation to keep two lighted lamps in the church; the parish miller would be paying 40*s.* per annum for his tenement; a serf, for the occupancy of about half a virgate, would be rendering, (a) a quarter of seed wheat at Michaelmas, a peck of wheat, four bushels of oats and three hens on Nov. 12th, a cock and two hens at Christmas, and two pennyworth of bread annually as predial payments; (b) the complete tillage of half an acre of the demesne, any extra duties demanded by the bailiff, and three days' reaping by himself and a man, as boon services; (c) and a money payment at Nov. 12th of one halfpenny. In addition to these, his lord's consent was of course required for the marriage of his children, the sale of his live stock, and the fallage of any oak or ash. The cottager had to pay about 1*s.* 6*d.* annually for his tenement, perform a day or two's haymaking at a halfpenny's wage, and do four days' labour in corn harvest in exchange for his food whilst working. The rest of his time was at his own disposal and was employed in hiring himself out as herdsman or labourer to the richer occupants of the manor. If he could not somehow contrive to get into an ecclesiastical profession his highest ambition would probably be to become bailiff, and live in the manor house; an office which often became hereditary.

These mixed rents of partly compulsory, partly boon, and partly monied services defeat any attempt at accurately estimating the value of lands in Mediæval times, though Professor Rogers has accomplished all in this direction that is possible.

The population, size, proportions of land distribution, and acreage under cultivation, of course varied in each manor. In the Eastern counties two-thirds of the village of Hawstead

<sup>1</sup> *Vide Rogers, Six Centuries of Work and Wages*, p. 89, and *Prices and Agric.*, vol. i., p. 72.

were held by seven persons and the other third was occupied by twenty-six persons. The lord held in hand 572 acres of arable land, 50 of meadow, 40 of wood, and pasture for 24 cows, 12 horses, and as many oxen. His live stock consisted of 10 horses, 1 bull, 20 cows, 10 oxen,<sup>1</sup> 6 heifers, 6 calves, 92 sheep, 200 two-year old sheep, 5 geese, 30 capons, 1 cock, and 26 hens. No doubt his cote contained a large flock of pigeons,<sup>2</sup> which, together with rabbits from his warren and fish from the moat, largely supplemented the other foods which were dished up at his table; thirty-two tenants did suit at his court, and their provost was not only exempted from various services but ate his meals at the lord's table and "liveried" his horse in the manor stables.

The processes of cultivation practised by good thirteenth-century farmers have been handed down by several ancient writers; and taking first the rotation of cropping, we gather that wheat rarely succeeded a spring-sown crop, such as barley or oats, but was put in just after the last ploughing of the summer fallow. The land was ploughed three times during its year of fallow,<sup>3</sup> first in April, a second time in June, and lastly about Michaelmas. A mixed team of oxen and horses<sup>4</sup> (two of each), was preferred for the plough, except on very hard or stony ground, when a team entirely of oxen worked best. They ploughed if anything quicker than horses, for they were always moving and never came to a standstill like the latter on boggy ground, and their costs of keep were considerably less. Both kinds of animals were stalled for twenty-five weeks, beginning from St. Luke's day (Oct. 18th) and ending on that of the Holy Cross, or about the end of April. During this period the horse ate one-sixth of a bushel per diem of oats at  $\frac{1}{4}d.$  and twelve pennyworth of grass in summer, his shoeing cost one penny per week, making

<sup>1</sup> In this case it would seem as if the weekly predial and boon service was performed with the lord's plough beasts.

<sup>2</sup> The pigeon cote was the lord's monopoly, except on church lands, where there was less "red-tapism." Rabbit skins were used as articles of clothing.

<sup>3</sup> The fallow land was called *warectatio*.

<sup>4</sup> The plough horses were called "affri," Anglice "avers." Their hair was collected by the provost to make ropes of.—*Hosebonderie*, anon.

a total annual cost (per annum,) without reckoning fodder or chaff, of 12*s.* 5*d.* The ox whilst stall feeding consumed one pennyworth or three and a half sheaves of oats weekly, ten of which yielded a bushel of grain, and twelve pennyworth of grass in summer, which, without fodder or chaff, would make a total annual cost of 3*s.* 1*d.*; and further, argued Walter of Henley, when both beasts are worn out, there is the value of the horse's skin *versus* the meat on the ox's carcase. Now such cogent reasoning as this induces the reader to pause and consider if the Sussex people are so very behind the times in clinging to plough oxen while the champions of modern scientific husbandry are improving the breed of their gigantic shire horses.

Clay and stony soils were sown early, before the dry March winds hardened or desiccated the seed bed. Chalky and sandy lands were left to the last, and marshy ground was well ridged up, though we are not justified in concluding from this that there was any process similar to that of raftering by means of the modern double-breast plough.

Sometimes wheat succeeded another crop such as barley, but not usually.<sup>1</sup> The costs and profits of the crop per acre, according to Walter of Henley, were as follows:<sup>2</sup>

	£	s.	d.
Three ploughings, at 6 <i>d.</i>	. . .	0	1 6
Two bushels seed	. . .	0	1 0
Harrowing	. . .	0	0 1
Weeding	. . .	0	0 0 1
Reaping	. . .	0	0 5
Carrying	. . .	0	0 1
<hr/>			
	<b>£0</b>	<b>3</b>	<b>1½</b>



<sup>1</sup> Walter of Henley implies the succession of a spring crop to the "warectatio," and therefore wheat to a spring crop, when he speaks of the three ploughings as taking place respectively in April, after St. John's Day, and at seedtime when the earth is firm. Comp. Walter de Henle, Royal Hist. Soc., 1890, p. 18, and Rogers, *Six Centuries of Work and Wages*, p. 443.

<sup>2</sup> Professor Rogers is probably correct in surmising that sowing was always performed by the bailiff, and therefore never counted in the cost. *Prices and Agriculture*, vol. i., p. 16. There was no rolling, and weeding was performed in June with the mattock or hoe.

The value of the straw was considered equivalent to the cost of thrashing. If the crop only yielded three times the amount sown<sup>1</sup> and was sold at sixpence per bushel, there would be a loss of three-halfpence per acre; and the writer deduces from these figures the importance that every farmer should attach to the selection, annual change, and proper cultivation of his seed wheat.<sup>2</sup> It is evident that straw was of very little value, except for thatching; and the stubble, if not removed and used on the premises, was left so high as to have been worth purchasing in cases where bad farmers could be induced to sell it. It does not seem to have been used with manure, for the latter was generally mixed with earth and placed in compost heaps. The object of this seems to have been very vaguely understood. It is not profitable to expose the early errors of empirical knowledge unaided by science, but it is worthy of notice that Walter of Henley,<sup>3</sup> in explaining that manure wastes in descending and that marl wastes in ascending, completely traverses the real position of the case. Alas! that whilst chemistry was in the hands of the Alchemists, who hung up young alligators in their laboratories to scare the curious from the worthless secrets of their crucibles, and vainly tried to make impossible gold by spoiling useful brass, the ammonia of the farmyard was volatilising far above, and the lime of the marl-dressing was sinking far below the root fibres of those crops which they might have fertilised.

The management of the live stock was necessarily different to that adopted in modern times, not because less care was taken, but because the value and uses of the various species were different then to what they are now. Of course the introduction of the root crops, some few centuries later, completely revolutionised the winter management of live stock. The best time to buy beasts was between Easter and Whitsuntide, when they were cheapest. The oxen were each day bathed and groomed with a wisp of straw, and gene-

<sup>1</sup> The average yield per acre was 10 to 12 bushels, according to Fleta.

<sup>2</sup> The rate of seed sown per acre was 2 bushels of wheat, or rye, 2 bushels of beans, peas, or vetches, and 4 bushels of barley.—Rogers, *Prices and Agriculture*, vol. i., p. 16.

<sup>3</sup> Walter de Henle, p. 21.

rally fed at mid-day when at full work. Male calves were weaned gradually, from the end of the first month to the beginning of the third; but the heifer calves were not allowed to remain with the cow so long. The average yield of milk varied according to the cow's pasturage. Those cows fed on salt marshes yielded half a *wey*<sup>1</sup> of cheese, and a quarter of a gallon of butter per week, on the waste; on aftermath, or on stubbles, somewhat less. The dairy was generally under the management of a woman,<sup>2</sup> but supervised by the bailiff. On some manors no cow was milked after Michaelmas, and no ewe after August; in fact, it is difficult to see any possibility of yield after the grass failed. No doubt salted butter and cheese supplied the wants of the population during the long interval of winter, and the necessity of milk was less felt in an age when tea or coffee had not even been dreamed of. The milk of the cows and sheep was often mixed for the purposes of cheese-making, the busy time for which commenced at trimilchi, a name given to the month of May, since the cows then began to be milked thrice daily.

The value of a cow's milk during the twenty-eight weeks, from Michaelmas to May was averaged at tenpence on those manors where it was the custom to milk them; but from May to Michaelmas it was worth three shillings and sixpence, so that the most profitable management was to use or sell the winter's yield of milk and make cheese of the summer's. During the six summer months the average yield of one cow's milk made six stones of cheese.<sup>3</sup> The annual value of an ewe's milk, during the period she was milked, averaged sixpence.

The sheep-fold was sprinkled with fresh earth once a fortnight, a practice which betrays the permanent nature of this

<sup>1</sup> The *wey* was equivalent to 14 stones in weight. The gallon of butter weighed 7 pounds. Comp. Walter of Henley, Rogers, *Prices and Agric.*, vol. i., p. 54, and *Hosebonderie*, Royal Hist. Soc. Professor Rogers surmises that the butter was melted into the gallon jar.—*Prices and Agriculture, Mediæval Agriculture*, vol. i., p. 54.

<sup>2</sup> The dairy woman was technically termed the *Deye*. It is a common surname in Norfolk even now.

<sup>3</sup> Prof. Rogers estimates the largest cheese at not more than 8 lbs.—*Prices and Agric.* For prices of dairy produce, *vide Hosebonderie*, anon.

erection ; for, unlike the modern enclosure of hurdles, it was probably a fixed lambing court, the floor of which would soon become tainted and spread foot-rot and worse disorders unless thus renovated. The sheep were sorted out once a year, between Easter and Whitsuntide, and those for sale shorn earlier and fattened on some stinted pasture. Any old ewe, or toothless wether was killed and salted for the use of the household servants and labourers. Between Martinmas and Easter the sheep were kept up in the fold and fed with hay, straw, and pea pods.

The successful management of swine depended much upon the care bestowed on them during the three trying months of February, March, and April. They were allowed to lie a good time on dry ground during the morning, after which they began to roam about in search of pannage. According to Walter of Henley it was possible for sows to farrow thrice yearly. How this could be it is difficult to imagine. They and the sucking pigs were especially looked after, being separated out of the drove and brought nearer home. Geese, poultry, peacocks, and bees<sup>1</sup> were also kept, especially on demesne lands, and were mostly in charge of the dairy women. Hedging, ditching, and open guttering for drainage were performed by the demesne labourers, and in autumn there was in addition the cider and oil making. One quarter of pears and apples made a "tun" of cider, and out of a quarter of nuts four gallons of oil could be expressed. The various old MSS.<sup>2</sup> from which the greater part of this account has been drawn, frequently allude to the tithe dues, both predial and mixed, and there is very little doubt that both kinds were rigidly collected by the monastic and secular clergy at this time.

Let us end our description of medieval farming with a scene from the vision of Piers the Plowman. One of those bright

<sup>1</sup> One gallon of honey fed the contents of eight hives during the winter.—*Hosebonderie*. For management of swine, *vide* Walter of Henley, p. 29.

<sup>2</sup> Namely Walter de Henle, *Hosebonderie*, and *Les Rentes Seynt Roberd, Robert Grossteste*, who was the friend of Roger Bacon.—*Trans. of Royal Hist. Soc.*

mornings in early spring has emptied the village and filled the common field. Besides the proper tillers of the soil there are bakers, brewers, butchers, woolwebsters, weavers of linen, tailors, tinkers, tollers, masons, dikers and delvers. In a word all the community which by their various industries made each mediæval village so independent of outside help, have come out to further the spring cultivation.

It is a "faire feld ful of folk," some "settyng and sowyng swonken ful harde," others "putten hem to the plow," and all "worchyng and wandrying." There is not one there who is not directly or indirectly interested in those handfuls of grain which are being flung so rhythmically into the furrow. Whatever prevents their fructification decreases the means of the community's livelihood during the ensuing season, and no one helping there to-day can view such a possibility with indifference, just at the very time of year when he is experiencing what exactly being on short commons means.

This, however, is a day of hard bodily toil; and bearing in mind that it is not right to muzzle the labouring ox, no one, who has the means, can resist the shouts of "Hote pies! hote pies!" raised by the cooks, or the tempting liquids displayed by the tavern keepers, whose respective stock in trade has been brought down to the very scene of action. Everybody is busily engaged, save the priest yonder, who has come to look on, with thoughts divided between the cultivation of the crop, of which one-tenth would be his harvest tithe dues, and the possibility of detecting a plump hare amidst the fern and rough grass of the "fourlonges." His perceptive powers, dull over the perusal of "seyntes lyues," are keen enough when a chance of sport is forward. Educated in such a good school of agriculture as the monastery we should have expected that his supervision and advice would have been invaluable on such a day as this; but, according to the anticlerical Lollard who writes this account, the whole of the workers turn with disgust from such a false teacher to beg the truth from Piers, and we must now take leave of him in the *rôle* of adopted leader, exhibiting his professional skill to the agricultural community, who have made him the hero of the day.

## The Middle Ages.

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### CHAPTER XVI.

#### THE TRANSFORMATION OF THE LANDLORD INTO THE LANDOWNER, AND THE VILLEIN INTO THE TENANT FARMER.

THE principal laws of this period bearing on the land in its relationship to the feudal system have been already considered, but there still remains to discuss a class of legislation which was necessitated by an alteration in the status of both classes composing the landed interest. We have arrived at a period in the history of the English land when its owner was beginning to find out the small advantage to himself and the large disadvantage to the labouring class of the villeinage system. Now the reason for this discovery was, that the old ideas of seigniorial relationship with both land and people had been gradually undergoing a change. It had been all very well to own and command men in warlike times; but now that nations were beginning to regard bloodshed less as a pleasant pastime and more in the light of a stern necessity, to be avoided if possible, landlords began to look into their seigniorial rights with a view to extracting from them something more lucrative than that which jurisdiction powers and military tenures had hitherto produced. When the feudal system was first constructed, men's minds had never grasped all that land-ownership would some day come to mean; otherwise the subject would have been dealt with on different lines and in more definite terms. The thirteenth-century lawyers had therefore to continually invent fictitious rights, such as the lost grant, in order to keep pace with the growth in ideas on proprietorship.

On the other hand, the people were not likely to relinquish

without either a struggle or a *quid pro quo* the grasp that they still retained on a portion of the soil. How far both parties considered that those rights extended is a moot question. It is not so long ago that we were tracing primeval man's limits of ownership to the herbage of the plain, or the wild animals of the chase which it supported. Now, however, his sense of proprietorship had grown into a claim which comprehended the very bowels of the earth. Minerals were becoming an item in the national profits. Besides the early industry of the tin miner, lead was being exported from Welsh lodes, iron worked in Sussex forges, and coal dug in the neighbourhood of Newcastle to such an extent that the jury presented to a thirteenth-century assize that the way from Newcastle to Core-brigg was much damaged "per fossas et mineras," and that people travelling by night were much endangered.

But we have little evidence as to the terms on which these minerals were got. The cinder heaps in the Forest of Dean and their recalcining in after ages prove little beyond the scanty knowledge possessed by Roman ironfounders. A coalpit at Preston in Haddingtonshire had been granted to the monks of Newbattle in 1219; Henry III. gave a licence to dig coal in 1234, and the monks of Dunfermline in Scotland had been granted liberty, in 1291, by William of Oberwell, to get it for their own use in his lands of Pittenbergh. In 1325 the monks of Tynemouth were granting leases varying from £2 to £5 per annum to mining tenants; and though, at the end of the thirteenth century, Parliament had petitioned the king to prohibit its use, a good deal of the mineral was carried by ship from Newcastle to London, whence arose its name of seacoal.<sup>1</sup>

Nor does Professor Rogers enlighten us beyond giving the prices of thirteenth-century iron and steel. The former, he states, was sold by the piece, twenty-five of which were equal to the hundredweight; and the latter by the garb or sheaf, containing thirty esperducts or gads.<sup>2</sup>

Scant though these evidences are, they establish the rights

<sup>1</sup> We shall discuss the History of English Mining more fully in Part II. of this work.

<sup>2</sup> Rogers, *Prices and Agric.*, vol. ii.

of landownership to something a great deal deeper down than the surface, and it is of vast importance to collect and treasure up these early traces, which establish a precedent at the first infancy of that mining industry which now supplies the whole world with either raw material or hardware. We are a nation particularly subservient to precedents, and turn back to history for knowledge how to act whenever our national lawyers find themselves amidst unusual surroundings. It is thus our great unwritten code of Common Law has been compiled; and whether it be a king's insanity<sup>1</sup> or an unusual phase of conjugal relationship,<sup>2</sup> our judges hark back to precedent for their ruling.

We cannot but doubt then that these early traces of mining leases have played over and over again an important part in the Common Law of this land. The whole question of mineral proprietorship opens out a wide field of thought. Tin, for instance, was being excavated at the period of the so-called village communal system; and it would be interesting to learn how a tribal economy would dispose of its profits. The earliest existing reference to Cornish customs of tin mining is contained in the Charters of 3 John and 33 Edw. I.; and the rights of the miners are mentioned as ancient even then. Who first originated these grants of privileges to the tanners, or rather who first assumed the seigniorial jurisdiction over such privileges, is a secret of the remote past. It is not improbable that the pre-historic inhabitants of the tribal era of Cornish history were totally ignorant of the tin industry. From the very earliest ages this part of Great Britain had been exposed to foreign influences; and it is not at all unlikely that the rights to dig tin and turves to melt it with were originally vested in the person of some exploring Phœnician merchant or Spanish mining expert.

Handed down from time immemorial, these privileges at length found legal recognition in the above mentioned charters. By the first of these ancient deeds only the old

<sup>1</sup> Macaulay, *Hist. of Engl.*

<sup>2</sup> Edward Turner, article on Baron and Feme in the *Incorporated Law Society's Proceedings*, of the 18th Meeting, 1891.

rights to mine and melt the metal wherever tinners had been used to do so before in the moors and in the fees of the lords spiritual and temporal of Devon and Cornwall, were confirmed; but no limit of area was placed on the industry in the charter of the later reign. Not only were the royal demesnes thrown open to the tin workers, but the lands, moors, and wastes of all Cornish lords were at their disposal. The chief custos of the stannaries (a successor, no doubt, of the Earl Warden who, before the union of Cornwall with England, held jurisdiction over the tin miners) presided, either in person or as represented by his bailiff, over the Stannary Court, which was on all fours with the Court Leet. Under the cloak of his authority the workers might cut firewood on any waste, divert water-courses on any lands, and sell their goods in any markets free of tallages, stallages, tolls, and customs.<sup>1</sup> But with regard to the thirteenth-century mining of other minerals, it is disappointing to feel that no test case arose as to seigniorial and popular rights over minerals of the common lands and wastes. It is, however, more than probable that such mining operations were for centuries confined to the demesne lands of rich proprietors, whose capital would alone be available to defray the costs of getting this subterranean treasure.<sup>2</sup> It would be also interesting to inquire how far the getting of minerals by the tenant for life could be effected without impeachment for waste. The wording of 20 Ed. I. would seem to imply a more rigid protection of reversionary interests than that provided by the Victorian statutes regarding settled estates.

No contention, therefore, arose between seigniorial and popular

<sup>1</sup> *Vide* Gilbert H. Chilcott's paper, Notes on the Stannaries, in the *Incorporated Law Society's Magazine*, 1891.

<sup>2</sup> It frequently occurs,—it occurred only the other day on an estate managed by the author,—that the question arose: To whom belong the minerals on the lands once the commonable ground and waste of the manor, over which the surface rights had long lapsed? The legal mind refused to go behind the Enclosure Act dealing with the manor in question; but the lord of the manor would probably feel more satisfied if the title of the later freeholder were secured, as it is on the Continent, by the loss of the original seigniorial rights after a certain period of disuse.

claims to the mineral rights of the foreign lands.<sup>1</sup> Nor did any direct question of surface rights arise; but an altercation between tenants in capite and their subfeudarii indirectly brought this subject into prominence.

The landlords had no intention whatever of emancipating the people, and the latter had no intention of emancipating the soil. "If the Czar frees the Russian moujik," wrote the Duc de Morny as late as the present century to his imperial master in Paris, "he will be freeing the land." This was probably exactly the view our Norman aristocracy took of the situation, and therefore they clung fast to their powers over the villein while they allowed him his full rights over the land. When in Tudor times they began to convert his common field into the enclosures of individual ownership, the way had been paved for them long before, not, as in the Russian case, by a sudden constitutional grant of liberty, but by a gradual cession of seignorial rights, which, though terminating in emancipation, gained at the same time the co-operation of all the enfranchised grades of the villeinage, and in proportion weakened the ranks of those whose interests were threatened. But even at this early period the pages of the statute book betray an ambiguity regarding the ownership of waste lands, which led to much contention. As we have said, the agitation arose not from the ranks of the villeins, but higher up amongst the subfeudarii, and the struggle centred around those remnants of the Folcland now known as lord's waste. The infeoffed knights and freeholders had their own pasturage and forest rights attached to their tenements, but they advanced a further claim to rights of houseboote, heyboote, etc., over the whole baronial waste. They adopted a policy which has been called "running with the hare and hunting with the hounds," and appeared under a twofold guise. As possessors of seignorial powers they claimed their rights of common to the pastures and woods of their own estates, and as possessors of popular rights they saved their own private preserves at the expense of those assumed to belong to the tenant in capite, and cut their fuel and turf or pastured their live stock on the whole baronial

<sup>1</sup> I use the term employed in the *Extents Man.*, 4 Ed. I. s. 11.

waste. It was in vain that the State lawyers attempted to restrict by legislation this reassertion of popular rights.<sup>1</sup> The tenants in capite could show no valid title to their pretentious claims on the waste, and the vavasours, mesne lords, and paravall were by no means intimidated by such petulant braggadocio as Earl Warren's production of a rusty old sword as legal evidence of his proprietorship. Finally, a title had to be manufactured,<sup>2</sup> and the statutes of Quo Warranto confirmed all that was doubtful in prescriptive rights by sealing them with the authority of the king's grant.

At the same time the Statutes of Merton and II. Westminster limited whilst they confirmed the seigniorial powers over the waste. It is interesting to note and examine the apparent callousness of the villeinage over a struggle which might have extinguished the last principles of the *Ager Publicus*. What the mesne lords demanded and what the tenants in capite refused to cede were unstinted rights of pasture, etc., over the entire waste. The idea that anybody who chose might exercise popular rights over the waste brought the respective seigniorial owners of neighbouring villages into collision. The fresh legislation adjusted the difficulty in such a manner that the rights of the villeinage for all practical purposes remained unaltered. At the same time, theoretically at any rate, it obliterated entirely the original cause of those rights, by dissociating the Folcland from the people and connecting it with the manor. The new statutes limited the tenants' in capite right of approver, but in such a way that no visible alteration appeared on the surface. They brought about no divisions into separate enclosures of the general waste, but they confined manorial rights thereon to certain fixed numbers and classifications of the general live stock belonging to each district bordering upon it. It was not till the fourteenth century that the different distinctions in common rights came into being.

<sup>1</sup> Compare Statute of Merton, 20 Hen. III.; 18 Ed. I., st. 1, cap. xlvi. and 18 Ed. I., st. 2 and 3.

<sup>2</sup> Contrary to Mr. Green's opinion, I hold that the Statutes of Quo Warranto were intended to pave the way to the fabrication of titles. Comp. Green, *Hist. of the English People*, chap. iv.

Bracton, Fleta, and Britton<sup>1</sup> knew nothing about them, and from their point of view common could be acquired only in two ways, viz. by seigniorial grants or long usage amounting to seigniorial grants and caused by constant seigniorial sufferance.<sup>2</sup> Henceforth, however, every freeholder of the manorial arable ground had his common appendant on the waste, and every copyholder his common appurtenant; but whatever the speciality of common rights might be, whether common of vicinage, or of estovers, or turbary, or piscary, etc, there was, as we shall now show, practically no difference in the old rights of the villeinage. When a portion of the tenant's in capite lands was separated off to form the smaller manor of a sub-feudarius, the inhabitants of the severed district changed seigniorial ownership, and seconded any attempts of their new master to extend his and their common rights over the waste. Too poor to possess much personality in live stock, the limitation of the district's pasturage rights to a certain fixed head of live stock did not affect their few wants in this respect. The large freeholders with great possessions in flocks and herds alone felt the change, and the dispute was thus limited to the upper class of the landed interest. Differences between the villeinage and their individual lords were avoided by a wise compromise which did not call in the services of the national legislature. The lord recognised the popular claims on the waste, and the people for their part were ready to recognise that occasion might arise when it would be to the advantage of both sides to cede their rights.<sup>3</sup> Whenever the supply of manorial labour began to exceed that of cultivable soil it was for the good of the villeinage as well as of the lord to enclose portions of the waste. In many manors, therefore, a custom prevailed whereby the consent of the homage became the only obstacle before the lord could take this necessary step.

But the lawyers of this period were too astute not to detect an incongruity between the lord's fresh attitude with regard to the land, and the time-honoured rights never consciously ceded

<sup>1</sup> Vinogradoff, *Villeinage in Engl.*, Essay ii., p. 266.

<sup>2</sup> *Id.*, *Rights of Common*, chap. ii., p. 274.

<sup>3</sup> Seebohm, *Engl. Vill. Commun.*, p. 447.

by the villeinage. They had to reconcile the new manorial economy to the old polity of a communal system of land tenure. Glanville, Bracton, Fleta, and others, as Vinogradoff has shown, simplified the matter by ignoring popular rights altogether. They refused to see any distinction in the terms *servus*, *villanus*, and *nativus*.<sup>1</sup> In their eyes the *socman* as well as the *serf* was the *chattel* of the lord. Accordingly in the *Dialogus de Scaccario* the latter is represented as owning not only the chattels<sup>2</sup> of the *ascriptici*, but their bodies; and as late as the reign of James I. we see traces of the same fictitious assumption. But though an appeal to the King's Courts against seigniorial high-handedness was futile, and the villein could be ousted from his holding at the lord's will, he, as a class, still retained rights wholly irreconcilable with the legal theories of the age. What instance can be cited of a successful seigniorial attempt to interfere with, much less to alter, the agricultural system on the servile lands? Even more restricted was, as we have shown, seigniorial interference with the waste. Nothing could better illustrate the collision of legal theory with popular rights than the story told by Mr. Ashley, in his *Economic History*, of the quarrel between the Abbot of Burton and his tenants, which occurred in 1280.<sup>3</sup> But still more accentuated is the legal error when we come to examine that peculiar position of the villeins on ancient demesne lands, whom Bracton has termed men of free blood holding in villeinage, and whose peculiar privileges Vinogradoff has described in detail.

Meanwhile an important economic change was taking place over the servile lands which rendered still more untenable the Norman lawyer's position with regard to the villeinage. It has been pointed out that it was the general practice in primitive times for the poorer husbandmen to co-operate in the purchase or manufacture of all but the most trivial of agricultural implements, but that this practice was replaced in the ma-

<sup>1</sup> Vinogradoff, *Villeinage in Engl.*, Essay i., p. 44.

<sup>2</sup> An idea possibly originating in the custom of the lord to supply the villein's farming stock.

<sup>3</sup> *Vide* bk. i., p. 88.

norial system by the loan of seignorial stock, both dead and alive, for which a percentage of produce and labour was paid as rent. Now, though this system still survives in its chief features under the Continental metayer tenancy, and in a less degree under the steel bow of Scottish law, it was thus early recognised in England as antagonistic to the best interests of the land. For estate produce was more profitably disposed of by the cultivator than by the owner, and fixity of tenure brought about such permanent improvements of the soil as enabled the one party to demand and the other party to afford a higher rate of rental per acre. Once more, then, it became the practice for the villeinage, either as groups or individuals, to supply their own carts, ploughs, and harness, and purchase or breed their own horses and cattle. The granting of feu charters and then leases became more frequent, and the adoption of a money medium became more general throughout the kingdom.

It was in fact a silent, gradual, and bloodless revolution, in no way expedited by such occurrences as the Black Death or the great Peasant Rising of a later date. It probably began before the time of the Domesday Survey; and the entries therein referring to the censores or coliberti no doubt represent the extent of its adoption at that period. It is not, however, likely that there was any tenant entirely enfranchised so as to be free from predial service in some form or other. Mr. Ashley, in his *Economic History*, has cited the Manor of Beauchamp in Essex to show the progress of this process of commutation. In this case, though no liberi tenentes are recorded in the Domesday Survey, their number in the lists of 1222 has reached thirty-four. From the same manorial records the increase of a new class, the tenants in demesne, is noticeable, and the same author quoted above has attributed this circumstance to the seignorial grants of small holdings to the servi.

These processes bring into use new terms coined to illustrate the various steps in the social ladder, the topmost rung of which represented absolute enfranchisement. The following list out of an inquisition of 19 Ed. I., preserved at the Public

Record Office, and brought into notice by Vinogradoff, shows some of the most important distinctions at that age<sup>1</sup> :—

Liberi tenentes per cartam  
Liberi tenentes qui vocantur fresokemen  
Sokemanni qui vocantur molmen  
Custumarii qui vocantur werkemen  
Consuetudinarii tenentes 4 acras terræ  
Consuetudinarii tenentes 2 acras terræ.

By the chartered freeholders of this list we may understand tenants liberated from all predial service, both weekly and precarial; by free socmen those coliberti whose partial enfranchisement we have noticed earlier in this book. The molmen differed from the workmen in that the former paid partly in money, and the latter only performed labour for their holdings. The introduction of these *gavelmanni* or money-paying tenants of the manor is notified in the Court Rolls of the period by a double register of both the earlier services and the later substituted rents, under the respective terms of old and new assize.<sup>2</sup>

It would take up too much space to describe in detail the various duties and privileges which had gradually grown up out of the remuneration of popular labour by seigniorial food and support. The carriage performed for the lord, such as firewood for the manorial kitchen, corn for market, grain and dung for the demesne lands, the driving of geese to the annual fair, all duties comprised under the term "averagium," brought with them their special remuneration in food, lands, and other privileges. Thus the carters of the seigniorial produce had their grants of tenements called averlands and lodlands, labourers with the scythe those of serlands, leaders of the plough those of akermanlands, and caterers of dairy produce for the consumption of the manorial household those of cheese-land. Every villein had to perform the gafol earth or plough work on the lord's lands, for which he obtained a share of the produce according to the size of his holding. The so-called precarial services, such as Lenten earth or extra ploughing

<sup>1</sup> Vinogradoff, *Villeinage in England*, chap. vi., p. 186.

<sup>2</sup> Ashley, *Economic History*. Note 83, chap. i.

before Easter, mederepe or hay harvesting, the ingathering of the demesne's crops, etc., all had their special remuneration. Sheep, lambs, sucking pigs, horse fodder, and honey were equivalents for a monied rent, and even the free tenants acknowledged seigniorial jurisdiction by the payment in kind of such small dues as eggs at Easter, roots of ginger, pepper, and the like.<sup>1</sup>

Then there comes a time when terms associated with the chink of money replace in the old mediæval manuscripts those enumerated above. We begin to read of barlick silver, fish silver, malt silver, fald silver, scythe pence, wood pence, ward pence, and the like, until the class of molmen arises who represent the intermediate stage between the tenants paying rent wholly in labour and kind and those paying rent wholly in money.

There was another division of the villeinage amongst whom the same process was taking place. These were the tenants of ancient demesne, who were peasants belonging to manors which were vested in the Crown at the time of the Conquest. Personally free, they held their lands in villeinage, though a villeinage of a privileged type. They possessed their own particular courts, and were subject to a law of their own. Free from market tolls and custom duties, exempted from serving on juries and from the jurisdiction of the sheriff, not assessable for danegeld or the common amercement, and even taxed differently to the rest of the villeinage, they were still classed among the villeinage, and had their tallages to pay to the king, but they were not represented in Parliament.<sup>2</sup>

This commutation of predial service, and letting of demesne land for monetary equivalents, which did not become general till the reign of Edward II., were agreeable to the interests of both parties. The lord, on the one part, was anxious to save the costs of supervision, and in cases where he possessed the seigniorial rights to toll, not displeased in finding an enhanced source of profit from his market dues. The tenant in villeinage,

<sup>1</sup> For details of the various forms of predial and precarial services, *vide Vinogradoff, Villeinage in England, passim.*

<sup>2</sup> *Vinogradoff, Villeinage in England, chap. iii.*

as he now came to be called, was, on the other hand, agreeably attracted to any arrangement which would allow him to cultivate his own land at the most seasonable times of the year. Instead, therefore, of in future consuming his allowance of bread and beer, and sticking his sickle into the largest sheaf that it would hold each day that he laboured to harvest his lord's corn, he commuted such services by means of a money arrangement with his employer. A record was necessary of all such commutations, which therefore became henceforth entered on the manor rental. In this way the base and uncertain services of the villein regardant were exchanged for the more stable tenure in villeinage ; and whoever obtained a copy of the Court Roll could prove a prescriptive right to his occupancy. Theoretically he was still a tenant at will, bound to surrender his lands into the lord's possession before any alienation of the copyhold could be completed ; nor was it until the reign of Edward IV. that a copyholder could bring an action for trespass against his lord for dispossession.

The villein in gross was at the same time growing into the free labourer. The clergy, though slow to emancipate their own serfs, were ever preaching emancipation to the layman, and since naturally their influence was most powerful at the death-bed, many a serf owed his freedom to that same half-superstitious, half-pious spirit which in modern times endows our public charities with so much wealth. Others fled their native lands, for by law a villein could obtain his freedom provided he could prove a year's residence in a walled town, and many a slave thus escaped at one and the same time his master's vigilance and his master's fetters. It was indeed such an incident which made the Kentish commons' blood boil over, and sent them to join forces with the Essex peasants, when Sir Simon Barley sought to recapture an escaped servant living at Gravesend.

This was a very curious period in the relationship between agricultural labour and capital. It was a transition stage in which the position of the farmer, who in modern times comes between the land owner and the land labourer, and combines in his person the capital of the former with the technical skill

of the latter, had not yet been clearly defined. Until, therefore, boon and predial services had been entirely replaced by a money commutation, the lord was in direct touch with the labourer, and looked with a jealous eye on any depletion of his industrial store. At the same time the partial introduction of rents for services had begun to operate in an antagonistic manner between lord and villein. The former ceased to identify his profits with those of the latter, so that henceforth two divided interests in the soil arose, and the capitalist began to restrict the efforts of the producer. It was the object of the former to squeeze out of the latter all he wanted at the least possible loss to his capital, and there was at this time no hostile camp of traders to frighten the two landed classes into showing a united front. Interests that ought ever to have been identical were formed in battle array against each other, but it was a warfare betwixt giants and dwarfs; for the villeins had no political power, and even if they had had the sense to co-operate and resist, as later on they did for a short time resist, they would only have ultimately starved themselves as well as their antagonists. It was the old fable of the belly and its members over again, with the exception that no patrician was forthcoming to preach a lesson of compromise to both sides.

The effects of the unfortunate split brought about by the separation of the interests of the consumer and producer were at once apparent in the political arena.

The legislation of the age forthwith teems with statutes prohibitory of free trade. As early as 1266 we read of the Assisa Panis et Cervisiae which determined by sliding scale the market prices of wheat, barley, and oats, according to those of their baking and brewing. But in 1315 began a preposterous struggle between Parliament and nature. A famine had reduced the supply of marketable produce to a minimum, and so forsooth a law was passed prescribing the price of all articles destined for food consumption, which immediately drove whatever remained out of the public market. Meat and grain were henceforth sold surreptitiously at prices enhanced by the dangers attendant on illicit proceedings; until Parliament, seeing its egregious

error, repealed the new law within a few months of its enactment. But in 1349 a similar attempt was again directed against nature, when a pestilence had diminished the market supply of labour. In fact, throughout the reigns of Edward I., Edward III., and Richard II., and even up to the Reformation era, this absurd duel between man and the Deity, artificial and natural law, the decrees of English statesmanship and the visitation of God, continued. These iniquitous statutes commenced plausibly enough with a preamble directed against idleness and able-bodied pauperism; but, as we read on, it is apparent that they utterly destroyed all freedom of contract (if not that of the subject himself), and placed on equal footings the skilled and the ignorant, the idle and the diligent, the neat and the awkward, the strong and the weak, and the rogue and the honest man. Goldsmiths, horsesmiths, spinners, coriers, tanners, whitetawers, cordwainers, tailors, carpenters, masons, tilers, shipwrights, carters, and all other artificers were bound down to accept not only the wages they had accepted during times of competition, but even to refuse under penalty of imprisonment more advantageous offers, were such forthcoming. The wages of carters, ploughmen, drivers of the plough, shepherds, swineherds, d'eyes, and all other farm servants were fixed at certain low prices, and their compulsory term of service was extended to one year. Workmen were compelled to publicly hire themselves out in the market. Except in harvest time, townsmen were not allowed to seek hire in the country. Trades-unionism was guarded against by a clause prohibiting alliances, covins, congregations, chapters, ordinances, and oaths. Labourers were unable, under pain of the stocks, to leave the hundred in which they served, without letters patent under the king's seal. Artificers, people of "mystery," and apprentices "of no great avoir" were obliged to serve in the harvest; and the justice's proclamation once a year settled the husbandman's yearly wages, and twice a year those of the artificer.<sup>1</sup> Labourers were prohibited from playing healthy games such as tennis, football, and quoits, nor were

<sup>1</sup> 28 Ed. III.; 34 Ed. III.; 37 Ed. III.; 12 Rich. II.; 13 Rich. II.; 6 Hen. VI. c. 8; 23 Hen. VI. c. 13.

they allowed weapons; but, perhaps in grateful memory of Crecy, they were encouraged to spend Sundays and holidays in archery contests.<sup>1</sup> It is a wonder that their very meals were not restricted, for their clothing was limited to cloth of certain prices. Silk, silver, gold, and embroidery were strictly prohibited; buttons, rings, garters, owches, ribands, and chains were equally illegal—even the veils of their womankind were limited to yarn; and fur or budge, save that of the lamb, conie, cattle, and fox, was not permitted. Blanket, inferior russet wool, and linen girdles “according to their degree,” were the limits of decorative vesture granted to farm hands by parliamentary statute. These contemptible dress restrictions continued up to the reign of good Queen Bess, when even then every person except maidens, ladies, gentle-women, lords, knights, and gentlemen of twenty marks a year had to wear upon sabbaths and holidays a cap of wool, knit, thicked, and dressed in England, or in default pay a fine of 3*s.* 4*d.* per diem.<sup>2</sup>

If such pains, penalties, and restrictions encompassed the hardworking labour class, what are we to expect when we turn to the valiant beggars and vagrants of these severe times? It was under pain of imprisonment that the charitable relieved such folk, the justices of assize or the peace and the sheriffs had powers of demanding sureties from them for future good behaviour; and a beggar capable of labour soon found his way to the nearest stocks. The wandering heremites, university students, and begging friars were careful to obtain their ordinary's testimonial before they turned vagrants, or they might soon have found themselves in a like disgraceful predicament; and in Henry I.'s reign “all Irish clerks, beggars, and chamberdekins were voided out of the realm.”<sup>3</sup>

<sup>1</sup> 12 Rich. II. c. 6.

<sup>2</sup> 37 Ed. III. c. 9; 37 Ed. III. c. 14; 3 Eliz. IV. c. 5; 13 Eliz. c. 19.

<sup>3</sup> 7 Rich. II.; 12 Rich. II.; 1 Hen. V. c. 8.

## The Middle Ages.

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### CHAPTER XVII.

#### THE DISPOSAL OF FARM PRODUCE IN MARKETS, FAIRS, AND ABROAD.

As long as the custom of boon and weekly predial services was general, the farm was practically independent of the shop. The woods supplied the materials for agricultural implements, and the villeins themselves performed the crafts of carpenter, wheelwright, smith, brander, and wontner. For these services special portions of the land were set apart for their occupancy, a most necessary bait in times when the towns were beginning to attract every individual belonging to the artificer class. The national feeling was opposed to the office of middle-man, so that every tradesman was generally supplied with materials and paid for his labour by day or piece work. Beside the arable fields lay the hams, or stinted pastures; and the still existent names of Brandersham, Smithsham, and Wontnersham imply that these special allotments of superior pasturage were set apart for artificers of the above description.<sup>1</sup> These people probably performed the work of more than one village, travelling to and fro as occasion for employment offered itself. The farm, therefore, produced most of the necessaries of life. For the linen, which every housewife knew how to spin, flax was cultivated. Hemp was grown for rope, a material which had now replaced the Saxon usage of twisted willows for plough harness.

The chief external wants up to this period were salt, obtained from the southern coast or Droitwich, for preserving the

<sup>1</sup> Prothero, *Pioneers of English Farming*, c. 1, page 6.

winter's supply of meat; iron from Sussex for implements; millstones from Paris for corn grinding; and tar from Norway as a preventive of scab in sheep.

But the commutation of boon and regular predial services for money had thrown a large bulk of the national farm produce on the markets, so that seigniorial rights to toll represented a handsome item in the yearly income of the landed proprietor.

The great drawback to the market and fair was the heavy expenses incurred by the vendor. We are not surprised to find that the villein showed a preference for disposing of his produce at home, when we come to examine the multitude of market tolls payable by him before he could commence bargaining. Long before he entered the fair, he had been mulcted of pontage and passage dues every time he crossed a bridge or conveyed his goods over a stream. Then there was, besides the market toll, the piccage fee payable to the lord of the soil for the ground damaged in setting up a booth, the lastage fees on each twelve dozen of hides, ten quarters of corn, 200 skins of leather, or twelve barrels of pitch, and there were the stallage dues if he wished to show off his goods to better advantage by arranging them on a stall. It is doubtful, too, if the Court of Piepowder,<sup>1</sup> which administered justice to buyers and sellers at fairs, sufficiently compensated him for these drawbacks. At any rate there would be no pontage or passage fees at the Sunday auction at home, when he could hang his meat on the church doors and fold his live stock in the yard,<sup>2</sup> as an advertisement, while he attended morning service. So we may suppose that the general farmer did not trouble himself to travel to the great annual fairs, such as Stourbridge, Abingdon, or Winchester, but just preferred to await the feast of his own village saint, when the place was sure to be full both of merry-makers and customers.

But a distinction must be drawn between the two terms market and fair; for though every fair was a market, every market was not a fair. The latter was held far less frequently.

<sup>1</sup> "Curia pedis pulverei," so called from the dusty feet of the suitors.

<sup>2</sup> Put a stop to by the Statute of Winchester.

Its name is derived from "feria," the ecclesiastical term for a saint's day ; its origin is lost amidst the ancient customs of some tribal community, and its date of fixture probably originated from the commemoration of a pagan festival. Its usage was well known throughout Europe, and there were German fairs in the ninth century. On the other hand, the right of establishing a market was ever the prerogative of the State. In the days of the Roman Republic the Senate exercised jurisdictional authority to grant or refuse such rights to landowners. The Frankish kings claimed plenary powers over all transactions connected with trade and traffic ; and the early English sovereigns reserved among the *jura regalia* fullest authority over all commercial dealings, such as the exercise of police precautions, the right to keep a private beam, yard measure, or bushel, the exaction of tolls upon shipping in harbours and transport by road or river, and the grant of a market. Not a single unit of these various powers was obtained by either individual or corporation without a royal grant.

The fair was partly a religious festival, partly an opportunity for pleasure-making, but principally an occasion for commerce. The market was wholly a business resort. In the times now the subject of inquiry it was dangerous for a purchaser of goods to transact a private sale, since he would be naturally compelled by law to hand the goods over to any individual who could substantiate a better title to their possession than the vendor. In market overt, the act of purchase in itself constituted a valid title, and the toll was originally established as a testimony to the contract. We have already alluded, when discussing the Saxon era, to the practice of discountenancing private barter: the statute of King Ina, prohibiting the sale of goods outside a town except in the presence of witnesses, is a case in point. The Witan of Athelstan passed a similar Act; and the Norman Conqueror testified to the wisdom of such legislation by continuing the practice.

The right of toll, or the liberty of holding markets and trade jurisdiction within the lands belonging to the recipient of such a grant, was by this time limited to spots where custom or charter gave proof of a prescriptive right. During the reigns

of John and Henry III., 1,400 grants of markets and fairs were made, and double that amount in the 285 years A.D. 1199–1483. From the Hundred and Quo Warrant Rolls of Edward I. we gather that 202 private individuals, 116 religious houses, 15 burgesses and trade associations, and 32 nondescript parties claimed market rights.<sup>1</sup>

It is obvious that every fresh grant, unless inquired into (as was the usage) by a jury on a writ *ad quod damnum*, might have interfered with existing rights. Two or three of these trade resorts in too close juxtaposition would have done so. It was suggested by Bracton that few market folk would care to be benighted, and that it would take a third of the daylight alike in going to, bartering at, and returning from a fair distant from home between six and seven miles. It came therefore to be recognised that no new grant of market or fair could be made in a locality where that limit was transgressed.

Passing from the discussion of these inland centres of trade with their *mercatores stellati*, who with the toll-owner's steward constituted respectively the suitors and judge of the "Pye Poudre" Court, it is interesting to inquire next how the heavier goods were conveyed in winter, and what substitutes for purchasing the necessaries of life occurred during the severer weather of our English climate. There is very little evidence that either any really practical means of transit or efficient substitute existed. People who were cut off from the centres of trade by bad roads, had to provision their larders before winter came upon them. The common carrier was generally employed to convey goods to and from the villages; and his charges, though small, were supposed to cover possible loss or damage sustained by goods in transit, and for which he was liable by common law. There was, too, possibly an opportunity for purchase in the trade of the pedlar, which, however, though undoubtedly of great antiquity, cannot be traced so far back as the era of which we are speaking.

Perhaps one of the most marked features of this age was the violent fluctuations in the price of wheat. In 1243, 1244,

<sup>1</sup> Vide *Report of the Royal Commission on Market Rights and Tolls*, 1891.

1248, it was as low as 2s. per quarter, but in 1270 it reached the prohibitive price of £4 16s., and from 1315 for several years it rose again up to famine prices.<sup>1</sup> Beef and mutton were absurdly cheap, averaging about one farthing per pound.<sup>2</sup> Such high prices for cereals and such low ones for butcher's meat would seem to betray the small progress even then made from a pastoral to a more advanced stage of land cultivation. But if we look closer we shall see that, unless the year's yield was exceptionally bountiful, there would be very little occasion to go from home to get rid of every bushel of corn grown. Wheat formed the bread of the upper classes, but corn in some shape was the staple food of the lower orders. They ate it as maslin (a mixture of rye and wheat), and they drank it as beer (made sometimes of an inferior barley called drageum, sometimes of sprig). Oats were the food both of the stables and the dwelling, and pulse crops were principally grown for swine feed.

Professor Rogers has, in guarded terms, made a rough estimate of the population, wheat-growing area, and wheat consumption of the fourteenth century. He considers that the total average of soil under the plough was not less than it is now; that the yield per acre was about four times the seed sown; and that the grain required for each unit of the population was one quarter per annum. Taking into consideration that the total arable area in Angevin days included bare fallows and other corn crops, he deducts one-fifth from the wheat-yielding area of the present day, and leaves his readers to work out the sum.<sup>3</sup> To set about the task, we must examine the figures of modern statisticians, and shall find that the wheat-yielding area of England and Wales, when Rogers wrote his History, was about 3½ million acres. This area, under a system of wheat cultivation in Angevin days, would yield, according to Rogers, four times its seed; and since Walter of Henley recommends two bushels at least to the acre, we might conclude that the Professor estimates the thirteenth-century crop at

<sup>1</sup> Adam Smith, *Wealth of Nations*, Prices of Wheat.

<sup>2</sup> Rogers, *Prices and Agriculture*, vol. i., page 57.

<sup>3</sup> Id., *Ibid.*, Bk. I., page 56.

a quarter per acre, and that the yield of wheat in quarters, the national census, and the people's wheat requirements, are all three totals expressed by the same figures, viz. 3½ millions.<sup>1</sup> This, however, is a computation greatly in excess of what this author intended, as in another paragraph he implies that the then population was less than 2½ millions; so that if we take the wheat-yielding area of England and Wales at this present time, viz. about one million acres less than when Rogers wrote his history, we shall be nearer the author's meaning.

Thus, after a bad thirteenth-century harvest, without any foreign trade to fall back upon, it is quite easy to imagine that the total wheat-growing area of English soil at this time would barely yield sufficient breadstuffs to keep alive the population who depended upon it for subsistence. On the other hand, the rank and file of the rural villeinage possessed no live stock of their own, and were too poor to buy meat. Cattle and sheep were bred in large quantities by the richer farmers for other objects than the butcher's knife. In proportion therefore to corn, a large quantity of meat would find its way into the public markets, where the urban population would readily buy it.

But the farm produce of greatest importance was sheepskins, for the sake of both their wool and leather, so that, next to labour, there was nothing the landed proprietor looked more sharply after. The king was no less active in recognising a source of revenue in these commodities, and the law stepped in from time to time to protect the produce from royal rapacity. The principle of the staple (as its German derivation "stapulen" signifies) was to gather or heap together in one market or port the most prominent of the national exports, with a view to fiscal duties. These were times when, as we have shown, the king's rights to control mercantile dealings were undisputed. The confinement for a time of local trade to one place was neither unconstitutional nor unusual; and kings frequently

<sup>1</sup> Contrasting these figures with modern statistics, we find that the yield of wheat per acre now is some 28 to 34 bushels, and that the wants of the population, including a partial consumption by live stock, are estimated at 5½ bushels to the individual.

exercised their powers in this direction when funds were required for private purposes. In 1245 and 1249 Henry III. shut up all the London shops, and for fifteen days proclaimed a fair at Westminster. Though he drew a large revenue from the market tolls there were but few buyers, the goods were all spoiled, and their vendors ruined in health by the incessant rains. What was constitutional in isolated cases like this was of course constitutional in a case where the whole nation was concerned. The sovereign therefore found no legalised opposition when he determined to make wool, sheepskins, and leather the staple goods, and to bind their merchants to bring all such wares to his port to be weighed and measured before exportation. The site of the staple was constantly shifted, from abroad to at home, or from Antwerp to Calais, or from one market to half-a-dozen, until, for a few months in the reign of Richard II., the unfortunate merchants of the staple had to run the gauntlet of the customs on both sides of the Channel. Attempts were periodically made to remove the legislative restrictions on trade; but this was an epoch when statutes were made in much the same spirit as a fickle lover's vows—"only to be broken."

Notwithstanding all these drawbacks, one-tenth of the year's exports in 1354 was wool, contained in thirty-two thousand sacks, valued at £138,000, and, if we may credit Robert of Avesbury, the exports in 1356 reached the enormous total of 100,000 sacks, which at only 50s. per sack produced a revenue of £250,000.<sup>1</sup> In the reign of Edward II. Flemish weavers had been invited to come over and establish a native cloth industry, but this did not seem to affect the export trade. In 1390 Richard II. passed a statute prohibiting any person residing in England from purchasing wool except from the flockmaster, and then only for his own use, the effect of which was to hand over the entire export trade to the foreign merchant. The Genoese, the Lombards, and the Venetians

<sup>1</sup> Professor Rogers, however, values the greatest wool grant (that in 1340, mentioned over leaf) at only £138,000.—*Six Centuries of Work and Wages*, p. 205. Comp. also Craig and McFarlane, *Hist. of Engl.*, Bk. IV., ch. iv., and Bk. V., ch. v.

wove the English fleeces into their richest vestments. Every Continental dyer and fuller could distinguish Cotswold wool from that of any other country. It became a constant subject for legislation, it was more than once used as a kingly present,<sup>1</sup> and it at one time imperilled the safety of the Calais garrison.<sup>2</sup> But perhaps (for Robert of Avesbury's statement is probably an exaggeration) the zenith of its political importance was reached when, in 1340, flushed with the news of that great victory off Sluys, the Commons offered King Edward an aid of 30,000 sacks, in addition to the wool tithe levied in 1329 and the ninth imposed in the following year. Forestalling the grant, King Edward borrowed money on its security, earning by this transaction the French king's taunt of "wool merchant," and beggared several great Florentine houses. Professor Rogers has estimated the average cost of a sack at 80s., which shows a total value of £120,000; but if computed at the price for which wool was actually selling during the year of the grant, it reached a higher total still. It is however doubtful if the king ever obtained the full value of this aid. Commissioners were appointed to assess the quantity of wool in thirty-seven counties and four towns. The total arrived at after most careful scrutiny was nearly 10,000 sacks less than the amount of the grant. So absolute was the monopoly in this produce, that though one-tenth of the nation's annual wool supply was by this means thrown on the market at one stroke of the pen, it enhanced rather than lowered the price per sack.<sup>3</sup>

Severe though the penalties were against defrauding the staple, many a merchant braved the law to smuggle it across the Channel; and the wool packer enhanced the producer's profits at the expense of the foreigner, by inwinding with the fleeces, peltwool, tar, earth, and other rubbish. Though Cotswold sheep furnished the finest wool, which could be

<sup>1</sup> Edward IV. presented King John of Aragon with some ewes and rams.

<sup>2</sup> In 1464 the merchants of the staple petitioned the king to continue the wool trade with Burgundy, for fear the soldiers of the garrison should lose their wages.

<sup>3</sup> Rogers, *Six Centuries of Work and Wages*, p. 205.

worked up into cloth of gold for kingly robes,<sup>1</sup> that of Berks, Oxford, Kent, Salop, Hereford, Worcester, Somerset, Dorset, Essex, Cambridge, Norfolk, Suffolk, Surrey, and Sussex was also prized. All sorts of schemes were invented to get hold of the wool at low prices, and, as is usual regarding information pertaining to this age, our sole source is the laws which put an end to such attempts. It was bought at so much per sheep before shearing, and it was shipped abroad sheep and all. No wonder that the farmer was already acquainted with the efficacy of arsenical washes, mercurial ointments, sulphate of iron, and the like, whenever scab or rot threatened to ravage his valued flocks. Coarse and hairy though the wool was, it was worth a vast deal more in proportion during the fourteenth century than the silkiest Leicester fleece is to-day.

We must now devote a short space to those centres of internal trade, the mediæval towns. At the time of the Conquest some eighty overgrown villages were all that can be dignified with this appellation. Out of a total population of a million and a half, there were perhaps 150,000 townsmen. By the middle of the thirteenth century, the population of the whole country had increased by about a million; and Professor Rogers,<sup>2</sup> estimating the population of each town from the poll-tax statistics in 1377, has proportioned the urban to the rural inhabitants of England as 1 to 12·34. By the same process, London would then have contained 35,000 souls, York 11,000, Bristol 9,500, Coventry 7,000, Norwich 6,000, and Lincoln 5,000.

Any close description of mediæval town life would be out of place in a history which professes to confine itself to the discussion of a rural economy only; but the urban market at any rate comes within our scope, since it was generally subject to seigniorial jurisdiction. Those townsmen who individually or corporately held lands of lords, came, as we have already

<sup>1</sup> In 1498 a licence was granted to a Portuguese agent in England to export 60 sacks of Cotswold wool for cloths of silver and gold for the use of the Portuguese king. Craig and McFarlane, *Hist. of Engl.*, Bk. V., ch. iv.

<sup>2</sup> *Six Centuries of Work and Wages*, pp. 117, 120.

pointed out in an earlier chapter, under the system of feudalism as burgage tenants. Little is known for certain about primitive urban economy, but it has been thought that a town villeinage existed which performed certain crafts under feudal obligations. Like their rural brethren, they gradually forced their way upwards into complete enfranchisement, and resolved themselves into societies for mutual protection under the familiar terms of Merchant, and Mystery or Craft Gilds. The old seigniorial Court Leet of the oppidan lands became thus the Portmanmote, or town assembly, of the newly-formed municipality, in which the burgess of the Merchant Gild had a right to sit. Once constituted, these different Gilds were chary of admitting strangers into their select circles, so that the chance villein who succeeded in evading the strict seigniorial police restrictions against labour exodus at home, formed the nucleus of that fresh class, the journeyman, who now began to appear amidst the commercial centres of the kingdom.<sup>1</sup>

Besides the fixed day for the weekly market, a date, in many towns at a period of the year most convenient for purchasing winter stores, was set apart for the annual fair. The Flanders trade had its centre at Stourbridge, and that with France was localised at Winchester. Mr. Ashley gives a graphic description of this fair, which brings into prominence the complete jurisdiction possessed by landlords over such business resorts. On the morning of August 31st the bishop proclaimed the fair on the hill-top east of Winchester. In the exercise of his seigniorial rights he rode through the town on horseback, received its keys at the gates, took possession of the weighing machine in the wool market, put a stop to all intermural commerce, and then, with the municipal authorities, rode back to his pavilion on the hill, where he appointed a special mayor, bailiff, and coroner to govern the city in his name during fair time. Notwithstanding the erection of a timbered palisade round this ephemeral city of wooden shops, and the most com-

<sup>1</sup> If the reader would dive deeper into the subject of early municipal government, he cannot do better than read chap. ii. in Ashley's *Economic History*, to which the author is indebted for much of the short summary contained here.

plete police precautions, daring individuals dug their way through the walls to escape the tolls, or lingered on after the fair was closed to sell their goods free of stallage dues. Protected by the armed tenants of this spiritual lord, the marshal stationed guards at all the bridges and other approaches to the town, for the purpose of securing their master's proper pontage and passage dues, and prevent illegal barter of goods in transit. In the Court of Piepowder justices fixed the assize of all victuals, and servants tested weights and measures. The Flemish tongue in loud tones of barter arose from one wooden street, while that of France might be heard raised in lively altercation in another. Here were the goldsmiths, and there the drapers. Bales of wool cumbered the ground on another site. Now a pillory, at which some fraudulent baker or brewer was undergoing summary justice, attracted the eye; and now officers in the episcopal livery hurried by, carrying to the jury of the Dusty Feet Court in the pavilion the notched wooden tallies which in those primitive days represented the invoiced goods of the merchants.

This noisy scene continued for sixteen days and terminated at a specified hour, beyond which any further negotiations not only endangered the liberty of the vendor but the franchise of the seigniorial president.<sup>1</sup> It is a conspicuous sign of the lawlessness of these days, that at an age when the repairs to the highways were entirely neglected by the national code, a special legislative enactment provided that a clearance of all brushwood likely to conceal marauders was to be made two hundred feet on either side of highways leading from market to market.<sup>2</sup> This was not an unwise precaution when a noiseless bolt might place the successful trader on his way home-wards defenceless and at the mercy of any unscrupulous and indigent vagabond who could draw a bow or handle the arbalist. There was, too, a class of legislation which policed the markets, in which we do not find anything very objectionable, but rather the reverse, to the community at large; though possibly the motives that induced the king and his barons to

<sup>1</sup> Ashley, *Economic History*, Bk. I., ch. ii.

<sup>2</sup> 38 Ed. I., Stat. of Winchester, 1285.

set it in motion were not altogether disinterested. To insure the purchaser a proper *quid pro quo* on his bargain, the assize of weights and measures was enacted. That of bread and beer was directed against adulteration, whilst the laws against fore-stalling and regrating protected the market dues from spoliation through the premature purchase of corn on the way, and the artificial enhancement of prices by its re-sale at a profit in the market for which it was originally intended. These various laws introduced the aletaster and other less well-known officials belonging to the Court Leet.

So much then for legislation affecting our inland trade of farm produce ; but little remains to discuss when we turn to foreign commerce. We imported and we exported even in mediæval times, but never without a royal licence. In 1539 Edward III. granted liberty to the Flemings whereby they could trade in England and export corn. In 1376 permission was given to import 400 quarters from Ireland to Westmorland. In 1382 corn exportation was entirely prohibited, save to the king's territories ; but in 1394 it might be exported anywhere except to hostile countries, on payment of the customs. Excepting, however, the goods of the staple, discussed earlier in this chapter, our export trade was still in its infancy. Even the merchants of the staple up to the middle of the thirteenth century were foreigners. The Flemish and northern French manufactured cloths from English wools supplied to them by a London Hanse, which was only second in importance to the Teutonic institution of the same name. The fashion of a feudal age seems to have cast its picturesque mantle over this association which had been called into being for the prosaic and somewhat sordid purpose of trade protection.

Its headquarters, the Steel Yard, resembled in part a monastery and in part a castle. The celibacy of its inmates, the refectory with its high table for the superiors' meals, and the other tables in the body of the hall for those of the apprentices, resembled the former, while the armour of its master, the stout wall which encircled dwelling, warehouse, wharf and garden, and the precise closing of all means of ingress at curfew, resembled the latter. The stones of this combined factory and residence,

could they have but spoken, might have told many a tale of royal favour and disfavour from the date of their foundation in 1250 to that of their demolition in 1597. The City grudgingly suffered the presence of these Easterlings for the sake of that substantial assistance which was always forthcoming when the object was worthy. Bishopsgate was maintained, repaired and once rebuilt principally out of funds supplied by the Hanse, which also sustained one-third of the charges necessary for its defence. For a long time these merchants were the sole importers of foreign corn, but without the City's licence they were not allowed to supply the bakers and brewers. The mayor and sheriffs of London were, however, kept in a gracious mood by a judicious administration of perquisites; so that when Queen Elizabeth finally abolished this association, the corporation felt obliged to console their City officers for the loss of Hanseatic gifts in wax, herrings, and sturgeon, by an annual money compensation.

## The Middle Ages.

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### CHAPTER XVIII.

#### THE LAND BURDENS OF THE ERA.

THE Black Death appeared on August 1st, 1348, in Dorsetshire, reached London the following November, and within a year had exterminated one-third of the entire population. Villeins were no longer able to perform their boon service, farms were let at half their usual rents, sheep and cattle stalked gaunt and hungry through the corn-fields, crops rotted on the ground, lands went out of cultivation, provisions and labour grew scarcer and scarcer, starvation added its list of victims to the long deathroll of pestilence, and the occupiers of the soil lay down in thousands to die in those ditches and furrows which their own hands had fashioned.

Notwithstanding all this, the people would have suffered and perished without a murmur. Divided into two antagonistic classes of Labour and Capital as the landed interest had now become, and harshly and arbitrarily as the former had been treated by the latter, there were as yet no angry storm mutterings to direct men's eyes to a lowering horizon.

As long as the Commons were glutted with the pride of Edward's foreign triumphs, they kept quiet and submitted to every preposterous vagary of legislation affecting their food, labour, pastimes, and clothing. Englishmen, alas, have deteriorated since those days when doughty deeds stirred the heart of even the serf to its very depths, and it is to be feared that the Tower guns might roar "Victory" many a day before the more educated, but less patriotic, nineteenth-century rustic forgot his own woes in the thought of his country's triumph.

But when a king in his nonage succeeded to the vacant throne, and the run of military luck had at last ceased, almost anything sufficed to fire the combustible nature of the Commons' discontent. The new poll tax of itself was perhaps insufficient, but the coarse methods employed to test the validity of excuses on the ground of age, aroused their righteous indignation.

The outrage on Wat Tyler's daughter was an incident which not only fired the train of smouldering passion, but produced a determined and justly furious leader, both able and willing to direct the fierce flame of revolt which leaped up in Kent and united itself with the fires already aglow in Essex.

The forces of Jack Straw, the riotous priest, and those of Walter, the maddened tyler, joined hands. The emancipation of the serf had long formed the theme for ecclesiastical oratory, and the addition of John Ball to the insurgent ranks gave an impression to the uneducated that Heaven itself favoured the rising.

There was nothing very immoderate at the outset of the revolt. In order to test their claims of social equality, they kissed the *ci-devant* Fair Maid of Kent once or twice, and butchered a few especially obnoxious magnates, but their four simple demands were neither absurd nor impossible. Tradition must have reminded them that originally their claims on the English soil were far more substantial than any that they at present possessed. Now that their proprietary rights had dwindled down to a mere shadow, they began to agitate for a release from the lord's proprietary rights over themselves. Legislation had recently limited their labour profits and powers of barter; so to legislation they now naturally turned to limit their rents, and free their powers to buy and sell. 4d. an acre was not an extravagant limitation to place on the letting value of even the best land, nor was free trade a demand with which any enlightened economist of to-day can find fault. These, together with the abolition of slavery and a free pardon, were the four clauses which the king showed no reluctance to confirm by charter.

Had matters rested thus, the entire nation would have bene-

fited by the revolt; but long before the ink of those thirty clerks employed in copying the charter was dry, excesses had been perpetrated and precious blood spilled which no royal clemency could possibly condone. And yet even then no less than three charters were submitted to the Tyler only to be rejected with ignorant scorn. The demands of the insurgents increased in proportion as they mistook their unchecked violence for power. The total repeal of the forest laws, and the liberty for the poor to hunt or fish on the warrens, parks, woods and waters of private sportsmen, in other words, the old popular rights of the *Ager Publicus* were added to their former demands. The Government, thus forced to resist, soon found itself able to crush out a rebellion undertaken by undisciplined mobs, armed for the most part with sticks only. Wat the Tyler was killed, the crowds dispersed, 1,800 of their ring-leaders hanged, and in a few days the sheriffs were proclaiming the charters of manumission null and void in every county throughout England.

If now we compare the results of the contest which occurred betwixt King and People in John's reign with those of the insurrection just related, we shall be better able to understand the incidence of taxation during the period now before us. In the scene at Runnymede we have depicted the success of a capitalists' revolution, in that at Smithfield the failure of a labourers' rebellion. Accordingly, from the fall of the Tyler onwards, we may expect to find but little relaxation of those fiscal calls which the State had hitherto demanded of the producer. Grants of wool were made as often as the English kings wanted supplies. The disposal of produce and labour continued to be restricted by statute law; and poll taxes, hearth pence, and even the percentage dues from personality, weighed heavily on the farmer at a period of English history when agriculture was the principal, almost the only national industry of importance, and the rural classes composed two-thirds of the national population.

Setting aside, however, the comparison between the taxation incident on capital and that incident on labour, let us next contrast fiscal demands on commerce, with those on land. If we

deduct certain boroughs which paid down a lump sum of money to compound the charge, and a few churches which had been able to establish a claim to entire immunity, the whole English soil up to the end of the twelfth century had become subject to the hidage tax. With the trivial exception of a few merchants' fines and the prisage of wine, the land sustained the entire burden of national taxation. Personal property, including rent incomes, first incurred indirect taxation at the Assize of Arms, in 1181, when its owner's military equipment was proportioned to the amount he possessed; and the same kind of property incurred direct taxation when the Saladin tithe rendered it liable to a charge of one-tenth. In 1204 the barons were paying John a seventh on the value of their movables, and in 1207 the same king exacted a thirteenth from the whole of the laity.

So far all taxation on real property had been computed by the hide, but in Henry the Second's reign this uncertain basis was replaced either by the carucate containing a determinate area of 100 acres, or by the knight's fee of 20s. The old terms of taxation, such as hidage and Danegeld, gave place to the new nomenclature of carucage and scutage. No doubt owing to the coincidence of dates in the disappearance and reappearance respectively of the old and new names, Dr. Stubbs has rightly associated Danegeld with the newly imposed carucage, and hidage with scutage.<sup>1</sup> It seems, however, more natural to reverse the process, and connect the new carucage with the old hidage payments and the new scutage with the old Danegeld charge. For was it not Danegeld which got rid of the enemy without recourse to fighting? and was it not Scutage which, for similar reasons, commuted personal military service into a money equivalent? And further, were not the hidage and carucage bases theoretically identical, though practically there may have been some 60 to 100 acres difference between them? Be this as it may, for the future, tenants in chivalry were liable to scutage, occupiers of land to carucage, townspeople to the same charge under the name of tallage, and personal property to whatever percentage the fiscal authority demanded; for this tax seems to have varied every two or three years, like our

<sup>1</sup> Stubbs, *Constit. Hist.*, ch. xiii., p. 622.

modern income tax. Nor did the other two charges remain at the same rate for long. Scutage was 20s. one year, two marks another, and very often far higher even than this, if we may for a moment include under this generic term all the heavy charges and fines sustained by the owners of a knight's fee.

Magna Charta, as we have already said, relieved the tenants in chivalry of all but the most moderate fiscal charges; but when we turn to the carucage taxation, otherwise called donum or auxilium, we find nothing but the abortive peasant rising, recently described, which could have in any way tended to check the exactions levied under this head by the class in power. Carucage began at two shillings per carucate, it rose to five, and it fell again to three;<sup>1</sup> but, as in the case of scutage, it is a generic term, used to cover all those dona, auxilia, and Parliamentary grants, which have been discussed in a former chapter. The scutage returns had been left very much to the voluntary statements of the tenants in chivalry, under much the same system as income tax is obtained now; but not so the carucage, which in 1198 was assessed and collected by the instrumentality of a jury and sworn evidence, as indeed had been the Saladin tithe a few years previously. Afterwards, two or more knights out of each hundred came to be specially elected, in whose presence the reeve and four chosen men of every township assessed the carucage, and probably other taxation.<sup>2</sup> It might have been supposed that the distinction between those who paid scutage and carucage and those who paid carucage only would have drawn the line between those landed proprietors who sat in Parliament by right of possession, and those freeholders who could only be represented there by the knights of the shire; but this was not so, for the smaller tenants in chivalry, if not specially summoned by the king, could claim no prescriptive right to a seat in his council. The many, therefore, who were never thus invited, gravitated down to the freeholder class, and entrusted their political interests to the representatives of the shire. Besides the taxation levied by

<sup>1</sup> Stubbs, *Constit. Hist.*, ch. xiii.

<sup>2</sup> Id., *Ibid.*, ch. xii. p. 548.

Parliament, there were certain regular and irregular charges on particular estates, for foreign service, such as the king's gabelle (a tax originally levied on salt, but afterwards signifying a tribute), the ward of the sea, and the burial of the dead on the Scotch battlefields of 1321.<sup>1</sup>

Next perhaps to taxation, the heaviest claim on the farmers' produce must have been those multifarious market dues which have been alluded to in a former chapter. If any further proof of their severity were needed it would be forthcoming in the fact that the freeing of the markets from all dues formed one of the four clauses in Wat Tyler's first formula of terms. In addition to the tithe, a percentage was often levied on receipts by the Pope or other Church dignitaries; but this charge disappeared after the reign of Edward III. As soon as the land-owner ceased to cultivate his lands, or to share in the profits of their cultivation otherwise than indirectly through the medium of rents, the burden of the tithe fell upon the farmer. If we except that due upon timber, the whole of the mixed and predial tithes were obtained from the farmer's crops, wool, milk, and young live stock. Great though the parson's profits must have been, it is scarcely credible that Professor Rogers can have computed them correctly when he estimates them at rather more than two-fifths of the lord's income, even though he includes in this calculation those accruing from the cultivation of the glebe.<sup>2</sup>

There is very little evidence about personal tithe at this time, nor need we stop to consider its importance in a history such as this, which deals with real property only. Since, however, in A.D. 866 the Bishop of Utrecht was advancing a claim even on wreckage,<sup>3</sup> it is not likely that the English monastic clergy, who aped all that was foreign in their Church polity, would have overlooked this source of income. The ecclesiastic preached the duty of bestowing a tenth on God's service in so drastic a fashion, that even the child's pocket-

<sup>1</sup> Rogers, *Six Centuries of Work and Wages*, p. 209.

<sup>2</sup> Id., *Ibid.*, p. 161.

<sup>3</sup> Taswell Langmeade, *Engl. Constit. Hist.*; *vide Appendix on Tithes*, by Carmichael.

money was not his own until after he had deducted the few pence which he was told belonged to the Deity. Nor was it permitted for any individual to assume that he was giving alms until after his tithe had been paid. This brings up the subject of the poor and their maintenance, for which we shall shortly see the producer alone was taxed. There were, and there always have been, three degrees of pauperism, namely, (1) The impotent poor, such as the aged, orphan, lunatic, and diseased. (2) The poor by casualty, such as the disabled, decayed, and unfortunate. (3) The thriftless poor, such as the vagrant, idle, riotous, dissolute and the like. Before the statute of 43 Elizabeth there was no universal provision by law for relieving any of these three degrees in poverty. It has always been supposed that the religious houses were by virtue of their institution obliged to make some provision for the poor. It is so essential that the reader should be quite clear on each important stage in the National Poor Law history, that it is necessary, even at the risk of repetition, to once more beat the bounds of early tithe distribution. In the days, then, prior to the institution of parishes, when it was the practice of the bishop to send out his clergy to preach in the several parts of his diocese, he divided all the tithes that were paid into his hands according to the quadripartite distribution ; viz., one part for the maintenance of himself and clergy, a second for the repairs and ornament of the churches, a third for use of the ministers officiating therein, and a fourth for the succour of the poor and necessitous traveller. Directly, however, that the episcopal sees became endowed with lands, the bishops themselves proffered their particular share of the tithe for the encouragement of the Parish Church movement. On receipt of this fourth part of the tithe the resident parish cleryman adopted the same tripartite distribution just introduced by his diocesan ; that is to say, he used it for his own, his church's, and his poor's maintenance. What had thus been begun voluntarily was soon made obligatory by canonical, if not by secular law. It has been argued that this fraction of the tithe was insufficient to support the poor of the nation, and that if the Saxon laws are searched, traces of Poor Law legis-

lation are brought to light. In the codes of both kings, Edgar and Alfred, there are laws enacting that the priests and people should distribute alms, in order to sustain the poor. It is, however, far more likely that such legislation was directed against impious individuals who withheld their tithe, than that it was a fresh Poor Law provision. The regular and national poor funds, derivable out of the tithe, were of course largely supplemented, just as they are to-day, by private alms. The king, who was a large benefactor, was termed the advocate and kinsman of the poor; there was frequent resort to the King's Brief in times of pressure, like the necessity for rebuilding the church of a poor parish; then there were the Gild charities, to which men constantly demised lands or bequeathed personal property, for the purpose of being administered for the relief of the poor. The confiscation of the property belonging to such corporations by Henry, robbed the poor only one degree less than his previous confiscation of the monastic lands.

In early times before the establishment of monasteries, and perhaps for some time after, it is difficult to see how there could have been able-bodied poverty. The impossibility of a lordless man is grimly provided for by the Conc. Greatanlea of Athelstan. The whole pauper population of a district was composed of the slaves and the villeinage, both of which classes were legitimately entitled to their lord's support for a livelihood. Apart from the tithe question, the monastic houses, by reason of their seigniorial status, were liable for the support of the local poor. Here therefore the peculiar relationship of lord, land, and people solves the mysteries of early pauper relief.

But apart from this view of the case, the term "alms" implies a voluntary and indefinite payment, not the fixed and compulsory rate of a Poor Law. Later on, when monasteries had been founded and churches came to be appropriated by such religious bodies, it was usual for the vicar officiating in the appropriated church to retain one-third of the tithe, while the other two-thirds were applied by the monks for their own maintenance, the entertainment of the stranger and the relief of the poor.

From all this it is clear that the provision for the poor by the monasteries was in no way eleemosynary but compulsory. These religious communities were the trustees of national funds for pauper maintenance, not the irresponsible possessors of the nation's tithe. Even their splendid hospitality must be placed under the same category. The visitor was the nation's guest, and his board and lodging provided for out of the national tithe. If this had been otherwise, by what right or excuse could the law have interfered, as it so often did, to provide for the proper distribution of the Impropiator's Tithe? By the 35 Ed. I. c. 1, s. 1, it is enacted as follows: "Whereas religious houses were founded and lands given to them, to the intent that clerks and laymen might be admitted therein, sick and feeble men might be maintained, hospitality, alms-giving, and other charitable deeds might be done, and that in them prayers might be said for the souls of the founders and their heirs; the abbots and other governors of the said houses, and certain aliens their superiors, have laid heavy taxes upon the same, whereby the number of religious persons of the said houses and other servants therein being oppressed, the service of God is diminished, alms being not given to the poor, the sick and feeble, the healths of the living and souls of the dead be miserably defrauded, hospitality, alms-giving, and other godly deeds do cease; it is ordained that religious persons shall send nothing to their superiors out of his majesty's kingdom and dominion."

Thus early was attention drawn to this foreign drain on the national resources, which ultimately proved the main cause for the suppression and confiscation of monasteries by Henry VIII. But this was not the first national interference with the distribution of Church endowments. By 3 Ed. I. c. 1, the abuse of the monastic hospitality by the constant visits of great men was checked. Nor did the Legislature ever withdraw its watchful eye, as is proved by the statute of Articulo Cleri in Edward II.'s reign, by 2 Hen. V. c. 1, and other later enactments.

The statute 12 Rich. II. c. 7, in which impotent beggars were compelled to remain either in the cities and towns where they happened to be residing at the time of proclamation, or if the

people of such places could not support them, withdraw to other towns within the hundred, or to the towns in which they were born, together with what is practically a repetition of the same in Henry VII.'s reign, are the only two other allusions in the national statute book to the impotent poor up to the reign of Edward VI.

When we turn to culpable poverty, we are struck most with the ingenuity by which our forefathers avoided the expenses of imprisonment. A rogue or vagrant, in fact any one coming under the category contained in the third degree of poverty mentioned above, found but little mercy. He was quickly branded with a V and turned over for a year's serfdom to any one who would be troubled with him; when any further delinquency on his part was punished with chains, flogging, or death.

It is the more important to understand clearly the provision made for the poor prior to the suppression of the monasteries, so that the reader may be prepared to recognise the fact that ever since the first Elizabethan Poor Law, the land has been twice charged with the burden of the national poverty. Clearly when the first tithe provisions were made there was little property except land to tax; but even at the period now reached, there was growing up the great English middle class, which in Elizabeth's reign had become one of the chief factors in the kingdom.

This leads the reader back to the events with which this chapter commenced. The Black Death, though it failed at the time to arouse the apathetic villein to any violent exhibition of his discontent, had in the long run proved his friend, in that it entirely altered the social and political economy of the land; and the Peasants' War, though it failed miserably, had opened moderate men's eyes to the anachronism of slavery.<sup>1</sup> Emancipated serfs were flocking into the towns, there to form the nucleus of that class which ultimately wrested the political supremacy from the land by the repeal of the Corn Laws.

<sup>1</sup> Professor Rogers holds that the insurrection, though suppressed, scared the authorities into surrender.—*Six Centuries of Work and Wages*, p. 271.

The scarcity of rural labour, and the high rate of wages, all labour statutes notwithstanding, forced landlords to let rather than cultivate their lands. In vain companies, colleges, corporations, and monastic houses sought to succeed where the great landlords were failing every day. By the end of the fifteenth century a large portion of England's soil, if we except the manorial home farms, was in the hands of the capitalist farmer, and the landlord had about as little interest in his tenant's welfare, as has the consumer in that of the producer in any other industry.

## The Tudor Period.

A.D. 1399–1603.

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### CHAPTER XIX.

#### FURTHER LAND LEGISLATION EXAMINED.

THE glorious sun of the Plantagenets sank amidst a lurid glare of civil strife.

The Wars of the Roses raged for many years up and down the country. Great landowners with long trains of retainers joined one side or the other, were victorious here and defeated there, survived this battle or fell in that. But throughout the prolonged struggle the agricultural classes ploughed and sowed their lands, harvested and marketed their produce, lived, and actually prospered, regardless of and indifferent to a commotion which had originated in causes too high up to affect their interests or concern their thoughts.<sup>1</sup>

The constant recurrence of boy kings, a singular feature of the times, had perhaps momentarily stunted that reverential sentiment for royalty, whose fibres have been ever rooted deep down in the Englishman's heart, and whose vigorous growth was later on evidenced in the absurd creed that rings consecrated by kingly agency could charm away cramp, and that necks touched by kingly fingers could be cured of scrofula.

Throughout the period we are now about to discuss, the exodus of rural labour into the towns continued. It was remarkable how deftly hands accustomed to the spade and wheelbarrow could manipulate the scales and scoop of the shop. Men soon learned that they were more secure under burgage than soccage tenures, that tallage taxation was no more for-

<sup>1</sup> Rogers, *Agriculture and Prices*, vol. iv., p. 19.

midable than carucage, and that more money came out of the till than out of the soil.

So far-reaching and beneficial had been the land legislation of the fourteenth century, that throughout the Tudor period, up to the reign of Henry VIII., very little further was required or enacted. The dangers incident to civil warfare induced the great landowners to make frequent use of the statute De Donis, so that the whole landed interest was very little affected by the confusion that must otherwise have ensued whenever a change of ownership occurred by confiscation or other war casualties.

The younger sons alone suffered from the consequences of this rigid adherence to the custom of primogeniture, and they had to resort to other means of livelihood and fields for ambition than those formerly available out of the revenues of their paternal lands. During the reigns of Edward II. and Edward III. the Gothic powers of electing the principal subordinate magistrates, the sheriffs and conservators of the peace, had been taken from the people, justices of the peace had been substituted, and the separation of the Lords and Commons in Parliament had been brought about.

While the wars lasted there was little opportunity for legislation, if we except a class of laws beginning with that of common recoveries in Edward the Fourth's reign which affected the question of landed possession. The great lords were at first too powerful politically to allow of any alteration being made by Parliament in the law of entail; but they were vigorously discouraged by the judges whenever devices for new kinds of entail came before the courts of justice. So, though attempts in the reigns of Richard II. and Henry IV. to settle estates with substitutes, whose rights in the estate were to arise as soon as the grantees or their issue should alienate, were frustrated by the judges before whom such actions were brought, the earlier devices invented to elude the old entails were sustained, and that of a common recovery first received indirect legal sanction in the reign of Edward IV. Though originally introduced by the clergy, so as to evade the statutes of Mortmain, it was adopted by the laity in order to bar entails, and was met by the other side (also prompted by clerical invention)

with the establishment of Uses. In fact, a struggle lasting over many reigns ensued between the king, backed up by a few great landlords, and the remainder of the landed interest; the one side endeavouring to destroy, the other side to retain the power of entail. Against the latter Henry VII. introduced the statute of fines for landed property, and limited the benefit of clergy, whereby attainders could be stopped and the inheritance saved, to one intervention only; and Henry VIII., though he sanctioned the demise of real estates by will, endeavoured to destroy the protecting effects of Uses. The practice of the latter custom had revolutionised the old mode of conveyancing with its assurance by feoffment and livery upon the land, which now gave place to secret conveyances to uses, long mortgage terms, and family settlements. By the end of Henry VIII.'s reign the results of the struggle were palpable in a state of affairs very little recognisable from the conditional fees at common law in vogue before the passing of the statute De Donis.<sup>1</sup>

This brief summary, it is hoped, will enable the reader to understand the more detailed account to which it is but a preface.

Taking the various statutes in the order mentioned, we are first confronted with the formidable task<sup>2</sup> of unravelling the process known under the technical term, "Fiction of Common Recovery."<sup>3</sup> It will be more conducive to a thorough understanding of this method if the reader bears in mind that its object was to bar entails.

<sup>1</sup> Blackstone, *Comm.*, Bk. IV., chap. 83.

<sup>2</sup> Blackstone expressed a fear that he would be unable to make his account of this process clear even to the law students.

<sup>3</sup> A "Recovery" was the legal term for obtaining anything by judgment or trial at law. It was a "Common Recovery," because it was a beaten and common path to the end to which it was appointed, viz. the cutting off of the estates' tail. Finally, it was a fiction or feigned recovery, because the whole proceedings were a pretence brought about by the collusion of three parties. These were technically termed (1) the defendant (in reality the recoverer) who brings a friendly writ of entry against (2) the tenant (in reality the recoveree), and (3) the vouchee whom the tenant calls to warranty for the lands in demand.—Jacobs, *Law Dict.*, *sub voc.* "Recovery."

The inconvenience of a strict entail was felt by parents of children disobedient with impunity, by farmers deprived of their leases, by creditors defrauded of their debts, and by purchasers cheated of lands through the practice of vendors in secretly entailing the property sold. As we have said the efforts of the Commons to obtain any alteration in the law were frustrated by the opposition of the great landlords. The remedy, however, came about by the collusive process known as "A Fiction of Common Recovery." The judges could not allow a law to be entirely disregarded, but they were favourable to any method of evasion which the aggrieved landowners could devise, provided it were sufficiently ingenious to baffle any future attempts to upset their judgment by the issue of the tenant in tail. The latter determined to work out a scheme initiated by the clerical houses in evading the statutes of Mortmain. The recovery of the entailed property by means of a friendly plaintiff, on a fictitious title was the groundwork of their plans, but it was not sufficiently secure *per se* against the possible attempt of the tenant's issue to recover the lands entailed upon them by means of a writ of *formedon*.<sup>1</sup> The opponents of entail contrived therefore a still more intricate and ingenious process, introducing a third party to the collusion. The tenant in tail having secured a friendly plaintiff, or defendant as he was technically termed, appeared in court in the apparent *rôle* of defendant, and called in a fictitious personage to witness that he had warranted the title of the lands in tail. This the witness admitted, but when further called upon for a defence, he suffered judgment to go against him in default.

The court therefore adjudged that the defendant should recover the lands from the tenant in tail, and that lands of equal value should be handed over to the latter by the defaulting vouchee, as the fictitious witness to the warranty was technically termed.<sup>2</sup> As this device gradually became reduced to a nicety, the proceedings grew even more complicated, and the lands were first conveyed by a deed called the recovery

<sup>1</sup> So called because they claimed *per formam doni*.

<sup>2</sup> *Vide Williams, Law of Real Property*, ch. 2.

deed, to the tenant to the praecipe against whom the action was to be brought. Then a second person, called the defendant, issued the writ against the tenant to the praecipe. The latter forthwith called upon the tenant in tail to warrant his title. The tenant in tail, who in the legal phraseology of the age was said to have been vouched to warranty, performed the same process on another. This last vouchee was smuggled out of court by the defendant under the pretence of a private interview. Not returning, the court had no other resource but to pronounce judgment in favour of the defendant.

That the judges were favourably disposed to the proceedings may be inferred from the circumstance that later on the court crier often acted as the vouchee. Such recoveries then were governed by the strict rules of common law, and tenants in dower, courtesy, for life only, and in tail after possibility of issue extinct, as well as those who had made leases for life, or whose wives were entitled to dower, often cut off the reversioner's or remainder man's rights by selling their lands and allowing the purchasers to recover by this fiction. Although the judgment of the suit known as *Taltarum* in the reign of Edward IV. was adverse to the champions of this ingenious device, on the ground that in this particular case it was a recovery improperly suffered, it was for ever after recognised as admitting that a like recovery properly suffered would bar the issue in tail.<sup>1</sup>

As in the custom just explained, so now in that of *Uses*, the clever brains of the divine were the source of this cunning invention. At the close of Edward III.'s reign shrewd ecclesiastics took to driving that proverbial "coach and four" through the obnoxious statutes of *Mortmain*, by obtaining grants of land, not to their religious houses, but to the *use*<sup>2</sup> of their religious houses; and later on, Yorkist and Lancastrian land magnates went into battle with lighter hearts, because by imitation

<sup>1</sup> Reeves, *Hist. of Eng. Law*, iii. 881.

<sup>2</sup> A *Use* was a trust or confidence reposed in a man for the holding of the land. He to whom the *use* had been entrusted was intended to have the profits and the tenant of the land (technically termed the *terre tenant*) was expected to make an estate as the holder of the *use* (technically termed *cestui que use*) should direct.

of this monkish ruse their estates were not only secured against forfeiture, but their children's livelihood provided for by will. Then the Courts of Equity during the fourth Edward's reign set to work to reduce Uses to a fine art, and though at first the Common Law could take no cognisance of this practice, there were up to Henry VIII.'s reign always clergymen-chancellors ready upon all occasions to decree the performance of the trust and use.<sup>1</sup>

The Statute of Fines introduced by Henry VII. was probably intended to make a fine a bar to entail, though some have supposed that it was designed to give it the validity it had at Common Law before the Statute of Nonclaim had been introduced by Edward I. to bar the right unless contested within a year and a day.

By the ancient Common Law a charter of feoffment was generally the only written (if written at all) instrument whereby lands were transferred or conveyed.<sup>2</sup> It would have been supposed that the great number of witnesses, and the publicity and solemnity attending a livery of seisin would have afforded sufficient and lasting authenticity of the transaction. But this was not found a sufficient proof or title to possession in cases where

- ✓ charters had been mislaid and destroyed, or when long years had elapsed. It was seen that no title could be so secure as one that had been unsuccessfully contested in a court of justice.
- ✓ To obtain this, landowners resorted to a suit, when, as soon as the writ was sued out and the parties were before the court, a composition of the suit was entered into, with the consent of
- ✓ the judges, whereby the lands in question were declared to be the right of the contending parties. The agreement having been reduced to writing, was preserved amongst the other court records, by which means it was not so liable to loss or defacement as a charter of feoffment. A writ was then issued to the sheriff of the county in which the lands lay, directing him to deliver seisin and possession to the person in whose favour judgment had been pronounced. This process,

<sup>1</sup> Blackstone, *Comm.*, ii. 271.

<sup>2</sup> Charters of feoffment were not necessarily *written* instruments until writing became a compulsory adjunct by 8 and 9 Vict. c. 106.

which dates back to pre-Conquest days, was termed a "fine," which was strictly not so much the accommodation as the termination of a suit.<sup>1</sup>

Though the statute 4 Hen. VII. c. 24 made no apparent reference to entails, indirectly it was a covert blow against the statute De Donis. It did not repeat the declaration of the latter statute that fines, as against the issue, should be void, but it enacted generally that fines of land levied with proclamation,<sup>2</sup> shall include as well "privies" (i.e. representatives of the parties to the fine), as "strangers" (i.e. persons not representatives of the parties to the fine). Any one not a party to the fine had powers to vindicate his claims within five years from the date of levying the fine. This extension of the time, from one year and a day, allowed by the Statute of Nonclaim in the first Edward's reign, to five years, allowed by the seventh Henry's statute, has deceived historians with the idea that it had the opposite effect on estates tail to what had really been intended. But it must be remembered, that barring the right by Nonclaim was abolished by the statute of 34 Edw. III. c. 16, and only restored under less rigorous conditions by that of Henry VII.; and what doubts existed as to whether fines could be considered a sufficient bar to the issue of a tenant in entail were effectually removed by the statute 32 Henry VIII. c. 36.

By the reign of Henry VIII. Uses had become universal, and their defects patent to the whole landed interest. They and even feoffments were usually made secretly,<sup>3</sup> so that suitors for land met with the greatest difficulties in attempts to discover the legal tenant. The complaints of defrauded creditors and dowerless widows were united with those of the king and his great feudal lords, who had been, by the same means, mulcted

<sup>1</sup> *Cruise, Dig. Tit. 95, ch. i., ss. 1-6.* It has been explained as the final agreement or conveyance upon record, for the settling and assuring of lands and tenements, acknowledged in the king's courts by the cognisor to be the right of the cognisee.

<sup>2</sup> *Vide "Fine," in Jacobs' *Law Dict.** There were two kinds, viz., the fine according to the statutes, because it had been pleaded, whereas the fine without proclamation was termed a fine at the Common Law, and was levied in the old manner prior to the statute 4 Hen. VII. c. 24.

<sup>3</sup> *Craig and Macfarlane, Hist. of England, Bk. VI., ch. iii.*

of their profits from wardship, marriage, or relief. The Statute of Uses in the twenty-seventh year of Henry VIII. c. 10 was the natural result of such widespread spoliation. The reader has only to peruse the preamble of this Act to learn how widespread was the demand for redress. Lands which by Common Law could only be transferred by livery of seisin, had been conveyed by fraudulent feoffments, fines, recoveries, and other assurances, also by wills and testaments, whereby heirs had been unjustly disinherited, lords had lost their wards, marriages, reliefs, heriots, escheats, aids, and other profits incident on feudalism, married men their tenancies by the curtesy, widows their dowers, and many perjuries had been committed. The statute converted equitable into legal estates, by making the feoffees to uses a mere conduit pipe for transferring the estate from them to the *cestui que use*—in other words, it transformed the use into possession, so that such lands ceased to be devisable by will. Even after the enactment of this statute it was found that lands could still be transferred by secret transaction without formality or lasting document, a state of affairs which necessitated the further statute of 27 Henry VIII. c. 16, whereby no lands, etc., could pass, alter, or change from one to another by reason only of any bargain and sale thereof except by written and sealed indenture enrolled either in one of the Record Courts at Westminster or laid before certain public authorities within the county or counties in which the lands, etc., were situate. The intention of this Act was to abolish Uses altogether; but the ingenuity of man soon found various methods whereby the statute could be evaded; and the doctrine of Uses, scotched, not killed by recent legislation, revived under the denomination of Trusts, as well as in other ways.<sup>1</sup>

By statute 32 Hen. VIII. c. 1, usually called the Statute of Wills, it was enacted that every person having manors, lands, etc., shall have power to give, dispose, will, and devise by will in writing or otherwise, by act executed in his lifetime, all his

<sup>1</sup> See Cruise, *Digest*, Tit. xi., ch iii.; Burton, *Law of Real Property*; and Blackstone, *Comm.* Craig and Macfarlane, *Hist. of England*, Bk. VI., ch. iii., furnish all the prominent allusions in the above.

manors, etc., any law, statute, etc., to the contrary notwithstanding. By the same Act an infant up to the age of twenty-one years could make no will of his lands except in case of special local customs ; though a boy at the age of fourteen and a maid of twelve years might make a testament of their goods and chattels, and a feme covert could, with or without her husband's consent, make neither will of lands nor testament of her goods and chattels.<sup>1</sup>

This short examination of the national code, though comprehending only the history of a few centuries, discloses a system of legislation alternating between fresh enactments directed against abuses, and abuses directed against fresh enactments. The national lawyers were ransacking their brains at one time to counteract some subtle evasion of law, and at another to reduce such to a recognised legal practice—thus, in the words of Shelley, “ensnaring justice in the toils of law.” The august assembly of the legislature was to-day solemnly legalising a deceit which only yesterday had upset one of its previous enactments, and which to-morrow would be in turn upset by some fresh law. It is a relief to turn from legal quibbles and examine the condition of society for which such legislation, as has just been discussed, was required. It has already been pointed out that the unsettled and dangerous circumstances of civil war had induced landed proprietors to give more careful heed to that process of tying up estates which seems to have been so inimical to the royal interests ; and it can be well credited that methods such as “uses,” which deprived the king and other landed grandees of their feudal dues, might truly be termed inimical to royal interests. But then this scarcely explains the ultimate success which attended the royal efforts when, during the last Henry's reign, the possession of land became no more secure than after the enactment of *Quia Emptores*. The cause of the Crown's success must be sought in some later acquisition of support from one or other of the three estates of the realm. Dr. Stubbs put the whole subject into a nutshell when he wrote as follows :—

<sup>1</sup> Jacobs, *Law Dict.*, *sub voc.* Will.

"It is probably true to say in general terms, that from the Conquest to the Great Charter, the crown, the clergy, and the commons were banded together against the baronage; the legal and national instincts and interests against the feudal. From the date of Magna Charta to the revolution of 1839, the barons and the commons were banded in resistance to the aggressive policy of the crown, the action of the clergy being greatly perturbed by the attraction and repulsion of the papacy. From the accession of Henry VII. the baronage, the people, and the royal house were divided each within itself, and that internal division was working a sort of political suicide which the Tudor reigns arrested, and by arresting it they made possible the restoration of the national balance."<sup>1</sup>

At the close of mediævalism the country was filled with internecine struggles. During the civil wars, kingly aspirant fought against kingly aspirant, baron against baron, and retainer against retainer. The clergy were figuratively always at each other's throats over the papal question, and, as we have just seen, the law was constantly mutilating its own majesty by legislating against itself. If it is allowed to make an addition to Dr. Stubbs's brief summary, it might be said that from the accession of Henry VII. to the death of Henry VIII. a great middle class had grown into political power which even thus early fixed a jealous eye on the land monopolisation. There could have been but one avenue to political and social greatness for the trader of Tudor times, and that was the investment of his fortune in the purchase of real property. The splendour of feudal homage and other dignities peculiar to landed proprietors were as unattainable as they were desirable so long as the influence of De Donis militated against a free trade in land, and the two Henries found no doubt more political assistance from the united vote of the burgess class in Parliament than from the uncertain views of a few great nobles who, though smarting under grievances identical with their royal master's, were disinclined to take action against their own order.

Throughout the fifteenth and sixteenth centuries, the commons were minding their own business, and prospering; wisely leaving politics alone until their increased wealth afforded them a political standing. This apathy of the lower classes, combined

<sup>1</sup> *Stubbs, Constit. Hist.*, ch. xxi.

with the want of cohesion in the ranks of both nobility and clergy, endued Henry VIII. with powers little short of absolutism, which he used to crush the nobility and half annihilate the clergy, but never to bully the people, who therefore seldom grudged him his supplies. Little did this despotic monarch and his daughter Queen Elizabeth foresee that vast transition of landed property from lords to commons which followed the dissolution of entails, the dissipation of church lands, and the alienation of the Crown estates. Could they but have lifted the impenetrable veil of the future, they might have anticipated and dispersed for ever the dangers which attended the acquisition of supreme political power by the despised commoner. Far better would it have been for the sovereign had he borne an occasional rebuff at the hands of a too haughty baronage, than to have eventually laid his head on the block at the mandate of an insolent democracy. The nobles, too, would have sooner cut off their right hands than their entails, could they but have been brought to believe that the latter process would later on have enabled a parliamentary majority to vote their revered order an unnecessary factor in the national constitution.

Perhaps no student of English history, unless he has watched closely the economic changes of each period, would suspect how closely connected with the altered views of the Commons was the change that now took place in the national agriculture. Throughout the mediæval period a system of rural polity prevailed which partook as much of the communal economy of a tribal era as of that individualism initiated by the overlord. The inclosure system just now coming into force broke up the English villeinage as a whole, and by throwing every man on his own resources built up in its stead that sturdy class of yeoman farmer whose independence and energy has stamped its impress on the entire nation. No longer tied to one general form of husbandry, or hampered by communal restrictions, or delayed by some individual's remissness, the tenants of the inclosure system could cultivate their fields at their own leisure, and sow them with any crop that individual enterprise or ingenuity could suggest. No wonder then that

out of the irresponsible unit of a servile class there arose the British farmer, in whose character are exaggerated most of the virtues and some of the weaknesses of this stubborn self-asserting Anglo-Saxon race. And yet, despite the assumptions of mediæval lawyers, the Englishman had never degenerated into actual slavery. He might have been called a chattel of his lord, but no one knew better than the latter how little the name suited his real position on the manor. He clung to the ancient privileges of a tribal economy, and sustained the rights of a free community amidst all the arbitrary innovations of the overlord. Beyond the revolutionary changes brought about

- ✓ by the introduction of the manorial system there was a fixed line, to transgress which by either party without a *quid pro quo* was impossible. The expenditure of seigniorial capital in improving the manorial lands, or supplying the manorial farming stock, purchased the labour services of the peasants, and since those services represented the rents of the land and were afterwards commuted at their fair value in money, it is questionable whether the difference between the villein of the fifteenth century and the tenant farmer of the nineteenth was so very great after all. Besides the ministeriales or manorial officials, there were the village representatives, and the Court Leet protected the people's rights in the same way as the Court Baron protected those of the lord. It is not therefore hard to see in this survival of a communal polity the germ of that popular independence which eventually shook the English constitution to its very foundations.



## The Tudor Period.

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### CHAPTER XX.

#### THE CONNECTION BETWEEN LAND AND TRADE.

THE chief feature of the age now under discussion was the rapid and vigorous growth of the great English middle class. Fortunes were being constantly made in trade, and within little more than a century the descendant of a wealthy Hull merchant had not only become a duke of the realm and the consort of a royal princess, but had died with the very crown within his grasp.<sup>1</sup> There were great commercial houses like the Cannings of Bristol, and merchant princes like Dick Whittington, thrice Lord Mayor of London and hero of modern pantomime. There was John Taverner, whom a wide export trade had induced to build so mighty a merchant vessel that its great cargoes of woolfels, passelarges, lambskins and hides evaded the staple by special royal consent. And there were many less famed merchant magnates who were initiating that daring spirit of enterprise which, in Elizabeth's reign, carried the English flag into all the out-of-the-way nooks and crannies of the hitherto ill-explored world. Attracted by such success the nobles themselves turned merchants, and the clergy followed suit. A reverend abbot<sup>2</sup> was not too sanctified to start a herring trade, nor the very king himself too august to seek wealth from commercial dealings. Our forefathers might

<sup>1</sup> The De la Poles of Hull subsequently became Earls of Suffolk. William de la Pole was created a duke for his services at the siege of Orleans; John de la Pole, his son, married the sister of Edward IV., and their eldest son was declared heir presumptive to the throne by Richard III., and was betrothed to a daughter of the Scottish royal house, but died as plain Earl of Lincoln a few years before his father.

<sup>2</sup> William of Trumpington, Abbot of St. Albans.

have with far more justice earned our modern reproach of being a nation of shopkeepers, had not all classes abroad been stricken with the same trading fever.

Though it was without doubt the aim of the Tudor dynasty to exalt the wealth of England, the privileges granted to foreigners had tended to place the national commerce almost entirely under foreign flags. As soon however as royal attention had become focused on the attempts of the Hanse merchants to obstruct English trade outlets, and on the monopolisation of native commerce by the Lombards, the patriotic queen needed not the London mob's clamour in the riot of 1597 to spur her on to remedying the abuse. She forthwith expelled the Easterlings, closed their Steel Yard, encouraged her merchants to build ships, and rewarded their successful captains. Henceforth the spirit of adventure stirred the hearts of bold sailors like Hawkins, Frobisher, and Drake, whilst the love story of Edward Osborne shed a glamour of romance around the hitherto prosy trade dealings of the sixteenth-century merchant, which afterwards proved an eloquent theme for the novelist.<sup>2</sup>

No wonder then that the Tudor aristocracy never considered that commercial dealings would soil their fingers, and that younger sons of the landed gentry found thus a suitable vent for their loftiest ambition. A few generations before, the sword had been the sole profession worthy of their consideration; henceforth commerce and the sword were so closely allied that the former was raised to dignity by the latter's agency. By such means was infused into trade the blue blood of the Norman, and into the landed interest the hitherto despised blood of the Anglo-Saxon; and this alliance of commerce with land obliterated those few remaining traces of race antagonism that had survived the lapse of centuries.

<sup>1</sup> In Edward Sixth's reign their monopoly was taken away and their liberties forfeited, but they still thrrove by exporting native cloths, till Elizabeth expelled them in 1597.

<sup>2</sup> Edward Osborne, a clothworker, saved the life of his master's daughter by jumping into the Thames after her, whereupon she refused the Earl of Shrewsbury and married her preserver, who thus became the progenitor of the ducal house of Leeds.

Reverting once more to the land-holding class, we find a marked alteration in their manners and social ethics. The old feudal system survived, it is true, as a shadow; but the substance which called it into existence had dwindled away to a mere nothing. The great lord might still aspire to lead his tenantry whenever he went forth on parliamentary or other state business, but it was a poor mimicry of the chivalric services in the old war times. The man who sat in the ancient judgment seat of the Court Baron was a feeble representative of his forefather, the dread dispenser of a justice which included the awful powers of life and death. The freeholders and copy-holders who paid him the rents of assize were vastly superior beings to the villein who tremblingly tendered his blanch-farms and blackmail, and the hired labourer a different person to the human chattel who performed menial service under the fear of his lash. And yet naturally enough the great land-owner clung to the old splendour of feudal associations; and though he could not demand the military services of his tenants for the purposes of private war, he paid them handsomely to wear his livery and become his armed retainers. By means of this mimic army he occasionally found opportunity to bully the judges on circuit, or arbitrarily usurp another's lands, or bolster up a failing cause, whereby he fondly imagined that he became once more the chivalrous and autocratic personage of a bygone age.<sup>1</sup>

During the Wars of the Roses there had been sufficient reason for the custom; but as soon as they ceased the necessity for these small domestic armies ceased too. In Warwick's castles and manors 30,000 men sat down to dinner each morning at their master's expense. Oxen sufficient to stock a small farm were consumed each day at his town retinue's breakfasts.<sup>2</sup> All the London taverns were full of his men. All the streets were thronged with those who wore the cognisance of the bear. His privy counsellors, treasurers, marshalls, constables, stewards, secretaries, heralds, pursuivants, pages, guards, and

<sup>1</sup> Stubbs, *Constit. Hist.*, ch. xxi.

<sup>2</sup> Stow mentions six oxen. See also Bulwer Lytton's novel, *The Last of the Barons*.

trumpeters almost eclipsed the officials of the royal household ; and the magic of his name overawed majesty itself.

Sovereigns of the powerful Tudor dynasty could ill brook the possibility of a second king-maker, nor could the nobility themselves afford the expenses of such grandeur after that two-thirds of the estates in England had been half ruined by the civil wars and heavily burdened by mortgage and family settlements. But before we touch on the inevitable legislation which put a stop to this practice, it will be well to examine the well-oiled machinery which worked so mighty a system of housekeeping. The descendants of the Norman aristocracy had added two fresh meals to the two which had sufficed in Conquest times. The supper of Richard Grossteste's days was followed in Tudor times by the livery partaken in bed between the hours of eight and nine. Otherwise there was not much difference in the meals from those of the Angevin era. Breakfast eaten at 7 a.m. was the substantial collation required by people who had been up and about for hours. It consisted of two kinds of bread, fish or flesh, wine and beer. The livery was the same with the exception of the fish and meat. The dinner, probably the supper too, were the public meals, the former of which often lasted three hours. The incidents were very similar to those described in an earlier chapter. The lord sat on the dais, his tenants and guests according to rank above or below the salt. Perhaps the great oak centre table had grown somewhat thicker in order to bear without sagging the more abundant supply of viands required by the grosser appetites of the Tudor aristocracy. Minstrels, tumblers, jesters and jugglers beguiled the long hours with their songs and tricks, while the guests constantly emptied the great wooden and pewter mugs, or conveyed to their mouths luscious morsels with fingers which still continued to serve the purposes of a fork. Somehow, the blending of the Saxon and the Norman blood had bred an aristocracy in which the old traits of the Norman *gourmet* were lost in those of the Saxon *gourmand*. Even Church festival days were marked more by the consumption of foods and drinks than by the sanctity of their ceremonies ; and the so-called "glutton masses," held five times

yearly in honour of the Virgin, began with a short service and ended in a debauch which for the rest of the day converted the sacred edifice, where they were held, into a howling pandemonium. As for the more secular festivity of the laity, the profusion beggars description; and the modern reader can only conclude that all Warwick's 30,000 retainers were present to do justice to the feast in honour of his brother's induction to the archbishopric of York. An undertaking of such heroic proportions as this colossal meal prompts one to inquire not only whether fatal consequences of gluttony were not infrequent, but whether occasionally a moiety of the guests did not leave as empty as when they came, through the unavoidable miscalculations of the purveyors? And yet we never read of either occurrence, and can only attribute to the system termed "livery" their secret of successful management.

In every great household there were half a dozen or more separate departments, each presided over by a distinct official. The specialist of the buttery, for example, kept his accounts and furnished his supplies entirely irrespective of him who supervised the napery; and again, he who presided over the chandlery was a wholly distinct personage from the chief kitchen official. Every single inmate of the castle had his fixed daily allowance from each department, whose exact proportions had been furnished beforehand to each official; a process that enabled him to keep in store neither more nor less than would be required. To each individual went up daily from the buttery his due allowance, in trenchers of bread, manchetts,<sup>1</sup> and other buttery comestibles; and from the chandlery stores his daily proportion of wax and tallow-candles. On the proper week-day each inmate received his fresh linen from the napery department, and at fixed times of the year his new clothing from the tailor. There was no delay, no bad debts, and no waste. No one could complain and no one could be defrauded. Everything was arranged according to strict rule. There was the same foresight and discipline which now manages the soldier's rations in the barrack-room. But

<sup>1</sup> The allowance included two kinds of bread, of which the trenchers were common and the manchetts fine flour.

livery was a system extending beyond even the regimental caterer's ideas of foresight, for it provided for the possible addition of every sort of unexpected guest. No person, whatever his rank, whether king or subject, lord or commoner, Englishman or foreigner, could take the baronial purveyor unawares. The proportion of food and other bodily necessities due to each rank was known to a nicety, whether it was fixed by treaty as in the case of the retainer, or by national custom as in the case of the guest.

Closely associated with the system of livery were those of heraldry and maintenance; for the former afforded devices wherewith the retainers of the different nobles distinguished each other, and the other furnished causes for resolving them into hostile factions. When two lords had taken opposite sides in maintaining the quarrel of some insignificant dependant, it needed but a sight of the distinguishing heraldic badges to set their respective retainers by the ears. The heads of great families took to fortifying their houses after the manner of their castles; and then all the elements of constant though petty disturbance were at hand, which would probably have again deluged the country with blood, had not the hostile attention of royalty become attracted to these abuses.

It must not, however, be supposed that the Tudor sovereigns were the first monarchs who attempted to cope with the evil. Even so early as the fourteenth century, livery had not only been the means of extending a lord's protection to any stranger who would espouse his quarrel, but sometimes even shielded the malefactor from the just arm of the law. By 16 Richard II. c. 4, 20 Richard II. c. 2, and 1 Henry IV. c. 7, the practice was limited by law to the lord's own domestics, officers, and "counsel learned in the law." By 2 Hen. IV. c. 21, 7 Hen. IV. c. 14, 8 Hen. VI. c. 4, and 8 Ed. IV. c. 2, further pains and penalties were added to those of the earlier statutes, which had only inflicted imprisonment on the offenders. The effect of such legislation was not altogether to abolish livery, for both its repressive laws and its usage lingered on till Stuart times; the former to be repealed in Charles I's reign, the latter to be abolished in that of his son. But from what has

been already said on this subject, it will be evident that at the cessation of the civil wars these huge retinues of idle men, gathered about the great houses under the system of livery, had neither excuse for their continuance nor opportunity for their employment. Maintenance, however, furnished both, and it was against this abuse that Henry VIII. proceeded to legislate. The term had long been used to cover sundry and manifold malpractices. As early as the thirteenth century the maintenance of pleas or suits for lands by the king's officers in the royal courts had been prohibited by 3 Ed. I. c. 25. The maintenance of quarrels to the let and disturbance of common law, had been disallowed by 3 Ed. III. c. 33, and 28 Ed. III. c. 11. The statute 1 Rich. II. c. 4 inflicted pains and penalties on everybody (king's counsellors, officers and servants included) who sustained maintenance. But that particular branch of this system which alone concerns us at present received its death blow by 32 Hen. VIII. c. 9, which not only prohibited on pain of forfeiture the acquisition by purchase or otherwise of any pretended right or title to land, but placed the unlawful maintenance of any suit concerning land, or the retention of any person for maintenance by letters, rewards, or promises, under a penalty of £10 for every such offence.

So far our remarks have applied to a minute though powerful class of the nation, which it seems probable scarcely reached the small total of eighty peers at the time we are discussing.

By striking a rough average between the 2,300,000 estimated by the census of 1378 and the 4,400,000 estimated by that of 1588, Mr. Hallam has computed the entire English population in the seventh Henry's times at about 3,000,000 souls.<sup>1</sup> Excluding the peers, both spiritual and temporal, but including their children, the whole population was legally distinguished as commoners. Though equal in the eye of the law, there were many distinctions apparent to that of society. Such were the landed gentry, many of whom were knights, and all of whom were allowed to wear armour; the yeomanry, some occupying their own lands as small freeholders, and others farming the property of their landlords; the peasantry, a class composed

<sup>1</sup> Hallam, *Constit. Hist. of Engl.*, ch. i.

partly of a few copyholders and largely of labourers; and lastly, the burgesses, apprentices, and inferior occupants of the towns. There were, too, the professional classes, such as lawyers, leeches, scriveners, etc., but, with the exception of the first named, their numbers were insignificant.<sup>1</sup> The knights bannerets, bachelors, and squires, which composed the class of landed commoners, followed the example of their betters, and displayed a splendid hospitality out of all proportion to their incomes. The lesser public honours fell to their share, and in much the same worthy fashion as their nineteenth-century representatives, they ably filled the dignified offices of sheriff, justice, and knight of the shire. Those of the class not desirous of following a soldier's profession had the same rooted dislike to knighthood as our modern landed gentry. Perhaps too, like the squires of the Victorian era, they felt absolutely secure, without the ceremony of the accolade and prefix of "Sir," that no one would dispute their simple but cherished title to the term "Gentleman."<sup>2</sup> Setting aside this consideration, there was a natural dislike to being mulcted by the heavy dues imposed by the State on all recipients of this barren honour.

The household of the knight included among its servitors his younger sons, who, with the yeomen, passed under the generic term of valetti or varlets. Their parliamentary representatives were the knights of the shire, and until the act of 1445 not necessarily gentlemen born.

<sup>1</sup> Compare Stubbs, *Constit. Hist.*, ch. xxi., Paragraph 92. I cannot think that the bishop is correct in under-estimating the professional classes. The doctors may have been few, but the lawyers were a numerous class, in fact so superabundant, that a statute passed in 1455 called attention to the trouble and vexation occasioned by their large attendance in the Eastern Counties at the king's courts, and henceforth restricted their number to six in Norfolk, six in Suffolk, and two in Norwich. 38 Hen. VI., c. 7.

<sup>2</sup> From the year 1278 the tenant in free soccage whose land yielded £20 annual profits was liable for knighthood; but since the statute De Militibus in 1307, though still eligible, he could commute his liability to service. Thence up to 1358 there was no term like "homo gentilis" to distinguish the social grade of the freeholder. He was a rich yeoman or a poor yeoman, as the case might be, but unless as "miles," he had no distinguishing name to testify to his gentle birth until that created by the word "gentleman."

There were therefore no marked gaps between the various social grades of the upper landed classes. The sons of peers were, as commoners, on a level footing, not only with the knights and esquires, but with the peasant class; and the sons of knights and esquires had no practical distinction from the yeomen. Pedigree was tacitly allowed to be the sole arbiter of precedence, and even pedigree failed as a social standard when it placed the commoner knight above the mushroom-grown peer of a later creation. Degrees of wealth constituted the townsman's social distinctions, but even the beardless trade apprentices could aspire higher than his social superior the country yeoman; for in his case there was no interclass gulf too wide for a golden bridge, provided only he could collect sufficient material for its construction. The yeoman, on the other hand, could squeeze out of the soil neither the peer's patent nor the hereditary right to wear armour, and since to become the highest magnate in the landed interest it was necessary to desert that interest for awhile, the soil must have lost many of its worthiest sons.

The burgesses, however, extended no welcoming hand towards these restless immigrants. They grudged the stranger both his enfranchisement and the education of his children in their schools, and not once nor twice only did they petition Parliament to restrain this bucolic invasion.<sup>1</sup> Their reluctance, however, need cause us no surprise, if we remember that a superabundance of unskilled labour not only tended towards pauperism, but reduced wages low enough to enable smaller men to set up an opposition trade, which brought the levelling effects of competition into their hitherto sacred monopoly. On the other hand, the villein preferred the townsman's cold-shoulder to the unambitious monotony of field culture. He readily left the home of his birth, where half-a-dozen masters would have welcomed his labour, for the uncertainty of employment in the warehouse. He had seen his elders shudder as they spoke of the old restrictive labour laws, and he remembered their chuckling as they recounted some brilliant trade success of a country playmate. There was no doubt, by now, hardly an

<sup>1</sup> Stubbs, *Constit. Hist.*, ch. xxi.

English village which had not its recorded instance of some splendid gentleman's return to the home he had left as a ragged vagabond a quarter of a century before. And so the crowded towns widened out their skirts over the green meadow lands, and the farmer's corn-fields went back into pasturage for sheer lack of hands to guide the plough oxen.

As socially, so politically the landed interest held precedence over that of trade. The Upper House, where even the spiritual lords held heavy stakes in the soil, consisted more entirely of great landed magnates than it does now. Every forty-shilling freeholder was qualified both to vote as an elector and serve as a juror; so that the county members swamped the small band of townsmen who sat in the Lower House, and save in questions of local importance, or on grants of tonnage and poundage, the voices of the latter for a long period of history were seldom heard. It was outside Parliament that trade at first assumed political importance. Thus their growing powers enabled municipal authorities to keep royal exactions at the length of one arm, while with the other their vast increase of wealth allowed them to hold aloft a tempting lure to royal concessions. When later on the custom of benevolences—kingly extortion under the guise of gifts—grew up, it may be well imagined that the trading instinct of the townsmen enabled him to obtain his *quid pro quo* in the transaction.

In monied capital, the landed interest met its match, and, where gold could buy equality, the land could boast of no precedence. Partly through a magnificent hospitality, and partly through the powers of livery granted by charter, the great London guilds, thenceforth known as Companies, began to practise so splendid an outward display as to even equal that of the landed interest during its best days. It certainly far surpassed that of any age since, and it has long outlived the oldest memories of its rival's latest triumphs in this particular direction.

But if the labourer had invaded the towns, the trader returned the compliment by invading the country. He bought up the crown lands with avidity, and he pounced down upon the confiscated properties of the monasteries. His commercial

profits were not only invested in the mortgages and settlement charges of heavily burdened estates, but they enabled him to buy out their hereditary owners. There was a great land hunger in these Tudor times, which originated not so much in commercial enterprise as in sentiment, though the success which crowned the industrial efforts of the newly created tenant farmers might have encouraged the former motive. It is worthy of mention, that as soon as the merchant became a landed proprietor he not only turned his back on the old trade associations, but became a staunch supporter of the new interests. It is the same to-day, when the newly imported squire kicks down the ladder by which he has climbed into the select circle of county society, and tries to forget that the capital by which he purchased his lands, was the result of prolonged and honourable assiduity in the successful production of textile fabrics, or a daring speculation in hardware.

## The Tudor Period.

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### CHAPTER XXI.

#### THE INFLUENCE OF THE CHURCH AND THE EFFECTS OF THE FALL OF THE ECCLESIASTICAL LANDLORDS ON THE ENGLISH LANDED INTERESTS.

IN Angevin days the clergy not only owned half the cultivated lands of this country, but claimed a third of the knights' fees. Indeed, at this period of history the influence of the Church can scarcely be overrated. In Henry I.'s reign Baker, in his Chronicle, represents all the labour in the kingdom employed in the erection of monasteries; and Professor Rogers, in his *Six Centuries of Work and Wages*,<sup>1</sup> estimates the ecclesiastical population, exclusive of the regular clergy and begging friars, as about one in fifty-two of the entire population, male and female, above the age of fourteen.

Besides the monastic and secular clergy, there was the professional class, which included architects, lawyers, scribes, physicians and schoolmasters, men who were generally in holy orders. They wrote our books, drew up our wills, planned our houses, invented our laws (often plotted their evasion), farmed our land, practised phlebotomy on us, dispensed drugs to us, taught in our schools, preached in our churches, and begged at our doors. But the clergyman under the twofold guise of land proprietor and farmer is of most interest to a work of this kind. Soils cultivated by Churchmen were remarkable for their fertility, because abundant capital and a knowledge of ancient agricultural writings enabled their proprietors to farm them in the best possible way then known to the civilized European.

<sup>1</sup> Page 161.  
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Even on soils that did not belong to the clergy, ecclesiastical influence must have been at work. The agriculture of the neighbouring Church lands would be closely watched and imitated by the lay farmers. Advice would be solicited from and often proffered by the monastic husbandmen; and even a right to interfere could be claimed by those whose tithe charge gave them a stake in the layman's industrial efficiency. But if further evidence of Church influence be needed, it is afforded by the general use of saints' days to denote the dates of all agricultural operations. The year began on Lady Day; it was Hoketide when fallows should be broken up; Martinmas was the day for slaughtering the winter's meat; from the feast of St. Luke to Holy Cross day were the inclusive dates for sheltering in stalls the most valuable livestock. The most important commercial transaction of the year, the fair, was fixed on the anniversary of the local saint's day. Rogationtide (a custom originating in France during the fifth century) was the period of the "gauging" or beating the parish rounds, which impressed the public mind with the sacredness of proprietary rights, the principles of God's fee,<sup>1</sup> and the necessity for invoking God's blessing on man's labour; finally, harvest was considered incomplete without the solemn assembly round the village cross for purposes of prayer and praise. Even to this day there is an echo of these old and pious observances. Thus the chief rent days are more recognised as Lady-day and Michaelmas than the particular dates in March and September when these events occur.

There is little doubt that almost every one of the thirteenth-century manuscripts, to which in an earlier part of this work we had occasion to refer, was the result of ecclesiastical pens, and the Latin law book *Fleta*, said to have been written by a judge imprisoned in the Fleet about 1290, contains so much valuable advice on the management of land, the cultivation of crops, the use of manures, and the sowing of seeds, that it is more natural to attribute it to a monkish source. Then, too, there is the translation of *Palladius*, an anonymous manu-

<sup>1</sup> The cyriesceat and tithe were due at Rogationtide. Brand, *Popular Antiquities*.

script dating from early in the fifteenth century, and in all probability the product of some religious house in the neighbourhood of Colchester. Here is a treatise on agriculture so advanced in erudition and scholarship as to have been considered worthy by Milton to be ranked with those of Cato, Varro, and Columella. There is little doubt that the mediæval monks had access to all these authors, as well as Pliny, Virgil, and others. They had but to refer to the pages of the first-named writer to learn the uses and cultivation of the cucumber, cabbage, lettuce, radish, parsnip, turnip, and other now well-known garden vegetables, to say nothing of the many orchard and field products mentioned therein.

And yet even the monks were much behind the times; for the French were cropping their gardens with three or four different kinds of cabbage, Brussels sprouts, spinach, sorrel, beetroot, carrots, turnips, lettuce, rhubarb, fennel, and other greens, at a time when their English contemporaries were content with little besides the common cabbage, the native nettle, the leek, and Egyptian onion.<sup>1</sup> Then, too, the meats of a Frenchman's dinner were rendered wholesome and palatable by a *ragout* of green wheat-ears boiled in butter, or a sauce of young vine-burgeons, or a succulent salad, whilst on this side the Channel it is not certain if the majority of Englishmen knew the flavour of the commonest variety of cabbage. And yet the last-named vegetable was a native of Europe; the savoy and wirsing grew wild in Upper Italy. The artichoke (merely an improved thistle), the turnip and carrot were also of European origin. Of Eastern plants the cauliflower did not probably arrive in Europe till just before the Thirty Years' War, but the shalot was brought back by the palmers long ere this from Palestine.<sup>2</sup> The most famous, probably also the earliest, variety of any edible plant in this country was the

<sup>1</sup> That beans and cabbages were cultivated in the cottage gardens by the time of Henry III. is evident from Widow Alice's complaint in Court Leet of the damage done by her neighbour's pigs in rooting up these vegetables, *vide Le Placitis et Curiis tenendis, The Court Baron Selden Society*, page 75.

<sup>2</sup> Hehn, *Cultivated Plants and Domestic Animals*.

leek. Other vegetables may possibly be entitled to as long a pedigree, but none can vie in historical importance with this wholesome root. That it was a garden product at the beginning of the fifth century is proved by its mention in the miracle of S. Ninian. Its lofty elevation into a national emblem is stated by an old writer at the end of the seventeenth century to have arisen out of a great battle fought between the English and Welsh, in which the victory gained by the latter was chiefly on account of a sudden accession of confidence occasioned by an appeal to the national saint, and which inspired them to act for once on the offensive. In doing this they had to traverse certain fields of leeks, which, being plucked and placed in the hat, served as distinguishing badges, and have been worn as such ever since in honour of S. David on each anniversary of his death.<sup>1</sup>

Harrison makes out that there were in England at the time of Edward I., "melons, cucumbers, gourds, radishes, parsnips, carrots, turnips, and other salad herbs, but that such herbs, fruits, and roots as grew yearly out of the ground of seed (presumably the above species) became afterwards neglected, so that from Henry IV's. to the beginning of Henry VIII.'s reign there was little or no use of them in England." Gerarde, however, does not corroborate this view in his *Herbal*; but it is possible to reconcile the two accounts if we confine to a few cloistered gardens of the monasteries the introduction of these vegetables until the middle of the sixteenth century. That strawberries of some inferior quality were in English gardens at an earlier date is evident from the famous message of Richard III. to the Bishop of Ely. He asked the bishop to send up some of the good strawberries which grew in the latter's Holborn garden, just before he attended the council at which he seized Hastings.

The comparison between English and French knowledge of horticulture is even less favourable, if the produce of the orchard be substituted for that of the garden. English apples were good; but save these, damsons, and a few indifferent

<sup>1</sup> *The New State of England*, G.M. 1691, Part II. chap. iii. p. 45.

pears, there was nothing to vie with the Anjou peaches, the Orleans plums, and the Poitier figs of France. As for grapes, those of the French were as superior to those cultivated out of doors here as they are nowadays.

Yet the backward state of the English kitchen garden and orchard neither imputes ignorance to the native ecclesiastic nor impugns the leading position he held in all rural pursuits. Climate, soil, and an insular position are circumstances quite sufficient to account for the difference to which we have alluded above, without seeking it in any such causes as a national dislike to even priestly direction, or that growth of sectarian antipathy to the monastic clergy from whose ranks the ecclesiastical landlord was recruited. For the time had arrived when the landed clergyman must fall; when the polished and carved pillars of his convent home should no more be darkened by his stately shadow; when his trim-bordered gardens and "erberes" should be tended by other and less expert fingers; when the arches of the minster, with their crochets and knobs of gold, should re-echo the admonitions of other lips; when its painted windows, glorious with coats of arms and merchant's marks, should admit the sunshine on a different ritual, and when the fertile lands should turn over under ploughs guided by stranger hands.<sup>1</sup> With the great monastic landowner there went out of the country an important feature of mediæval land tenure. It is strange how small a gap in the landed interest this upheaval caused.

The storm had been long brewing; the monasteries had been threatened with spoliation over and over again. The property of alien priories had been seized as early as A.D. 1295; other Church temporalities had been transferred from one religious order to another; and more than once in times of danger the Sovereign had been prompted by the Commons to seize ecclesiastical property in order to provide funds for the national defence. In fact for many centuries prior to its dissolution, the people of England seem to have treated Monastic property as though they regarded it as State property. Mr.

<sup>1</sup> See the description of a Dominican monastery in *Piers Plowman's Crede*.

Clarke in his history of tithes,<sup>1</sup> cites no less than eight precedents for constitutional interference with this class of the Church's possessions, each one of which must have appeared to the nation as steps paving the way for some such wholesale act of confiscation as was now contemplated. We might have expected that the ecclesiastical interests would have long since taken the alarm and attempted measures to avert the catastrophe. If these premonitory symptoms of the State's hostile attitude had not caused apprehension, there were such statutes, as those of Mortmain, of Provisors, and of Premunire, to demonstrate how determined the nation was to curb any foreign participation in the control either of its faith or wealth. The Act of 1533 restraining appeals to Rome, and that of 1534 transposing the king for the pope as Head and Almoner of the English Church, placed Henry VIII. in closest contact with the monastic endowments. That fourth decade of the sixteenth century was fraught with danger to the alien clergy. In 1535 a Royal Commission had furnished Henry with complete details of the revenues of all ecclesiastical benefices, and in 1536 the edict had gone forth which began the work of dissolution.

In a history of this kind it is unnecessary to inquire further into the causes which resulted in the confiscation of English land valued at over a million pounds rental.<sup>2</sup> If we accept Hume's authority, this colossal spoliation involved one-third of the kingdom; or, if we are only content with the lowest computation, it exceeded one-fifth. Henry VIII. must have possessed a prodigious capacity for getting rid of money in order not only to fritter away the vast fortune inherited from his miserly father, but stow out of sight the proceeds of his huge burglary on Church property; and it is hardly credible that scarcely half a dozen years after, this sovereign was

<sup>1</sup> Rev. H. W. Clarke, *A History of Tithes*, p. 178.

<sup>2</sup> The clear yearly value was rated at £131,607, but was in reality, if we believe Burnet, ten times as great, the courtiers undervaluing those estates in order to obtain grants or sales of them more easily. Hallam, *Hist. of Engl.*, ch. ii.

reduced to the old kingly fraud of debasing the national coinage.<sup>1</sup>

The effects, however, of this tyrannous act were neither disastrous to the nation as a whole, nor to the landed interest as a part. Setting aside religious controversy, it may be concluded that the foreign drain on the country's resources of papal tributes flowing through monkish channels, which had originated the contemptuous phrase that England had become "the Pope's milch cow," would have ultimately resulted in national exhaustion; and the stoppage of the leak by means, no matter how drastic, restored that proper circulation of a people's wealth which alone conduces to the general prosperity. Nor did the change of masters over so vast an area of soil affect the ultimate welfare of the landed interest. It seemed as though the mission of monasticism had been fulfilled, and, like all anachronisms, it must now give way to other systems better adapted to the go-ahead but heretical times of freer thought and more peaceful commerce.

Throughout the turbulent era of mediævalism the cloister's walls had long preserved, and its inmates constantly reproduced, the evidences of the Christian faith, the educational treatises of ancient classical authors, and the precious historical records of an otherwise forgotten past. From generation to generation holy fathers had handed down the traditions of refinement and erudition. Out of their minds had flowed all the learning of an era otherwise utterly and superstitiously ignorant. But now the art of the printer could perform the same offices infinitely more easily and surely. The assiduity of the monks had reclaimed swamps and wastes; their learning had improved soils, and their shrewd brains had invented schemes which had vastly benefited not only the husbandman, but the proprietor of the land. No doubt then in future the landed gentry might sorely miss that legal acumen which had so often baffled the hostility evinced to their schemes of land monopolisation; the yeomen might look in vain for their hints on model farming; the poor might starve for want of their

<sup>1</sup> Rogers, *Prices and Agriculture*, Introduction to vol. iv.

benefactions, and the traveller might miss their welcome board and lodging ; but the family solicitor, the Fleming,<sup>1</sup> the Poor Law, and the wayside inn would soon supply these national wants, and the shoulders of the secular clergy were only itching to bear the remaining and more sacred duties of their high profession.

It was not so much the act of confiscation, whereby some four or five hundred monasteries were despoiled of their possessions, as the uses to which the proceeds were put that damaged the landed interest. It lost more than half its representative strength in the Upper House, and the provisions made for appointing substitutes were never adequately carried out by the unreliable king. But that in itself was not sufficiently grave to have stirred all the north country into open and armed rebellion. The funds with which the monasteries had been endowed were for masses and prayers on behalf of the dead, their revenues from tithes for the relief of the nation's poor and the entertainment of the nation's guests. The appropriation of these religious offerings by the Crown was an act of sacrilege. The national representatives, smarting though they were under the despotic deeds of Wolsey and other ecclesiastical extortion,<sup>2</sup> would have never given constitutional consent to this gigantic State raid on corporate property had they not hedged in its consequences with conditions that would have scarcely, if at all, outraged the sixteenth-century ideas of justice. The monks were to have been pensioned off, eighteen fresh bishoprics endowed, public highways repaired, and Channel ports fortified.<sup>3</sup> So, later, in the case of the endowed chantries, it was enacted that the funds should be disposed of for purposes of education and poor relief.<sup>4</sup> But Henry carried out these schemes just so far as to content his

<sup>1</sup> The green crop and the four-course system were soon to be introduced from Flemish sources.

<sup>2</sup> For one example, the enormous fees charged by the clergy on probate of wills.

<sup>3</sup> Hallam, *Hist. of Engl.*, ch. ii.

<sup>4</sup> This was in accordance with the policy invariably observed on former occasions in any State confiscation of Church property. *Vide A History of Tithes*, Rev. H. Clarke, p. 178.

people's minds that something was being done in the prescribed direction. In reality the bulk of the spoil fell into the hands of sycophant courtiers or capitalist tradesmen. The endowments of episcopal sees did not escape the avarice of these legalised robbers. Statesmen built houses with the material of razed churches.<sup>1</sup> The great wooden barns and cowsheds in the southern counties<sup>2</sup> still betray the use put to the timbers of ruined monasteries, and even the chestnut principals of Westminster Abbey might have been torn off for similar purposes, had not the alarmed Chapter averted this act of Vandalism by grants of lands,<sup>3</sup> which greatly reduced their future income. But the indigent poor suffered the most ; those in the rural districts by the cessation of monastic charity, those in the towns by that later confiscation of the guild lands. The soil still supplied the tithes impropriated by the new owners, who in many instances were not themselves landlords. Henceforth it was charged a second time over for the support of the nation's pauper population. It has been contested that the tithe never wholly performed this task ; that the unequal distribution of the monasteries over the land could merely relieve the demands of poverty in certain localities ; that the system encouraged and caused pauperism, and that, even while the monasteries were standing, legislation was at work to formulate a new system.<sup>4</sup>

All this, though strictly true, does not surely shake the position of those who contend that the present system of parochial relief was a necessity consequent on the dissolution of the monasteries. The portion of the tithe devoted to poor relief was no more and no less sufficient than the modern poor rates. It might with justice be urged that the latter are by far less able to cope now with the national poverty than was the former in Elizabethan times. Town pauperism, no doubt, drew the bulk of its relief in Tudor days from the guild charities ;

<sup>1</sup> Somerset House was thus built.

<sup>2</sup> I have myself seen the queer-shaped rafters, with their old mortice holes, in many an old Dorsetshire barn.

<sup>3</sup> Hallam, *Hist. of Engl.*, ch. ii.

<sup>4</sup> Compare Hallam, *Hist. of Engl.*, ch. ii.

even rural poverty obtained a fraction of its eleemosynary support from other than tithe sources, and so it is to-day, when the irregular assistance of Church offertories and other sources of private charity largely supplement the poor rate revenues. It was because the monastic system encouraged pauperism that legislation was at work, not to formulate a new system, but perfect an old one. The statute of 27 Hen. VIII. c. 25 merely penalised irregular alms-giving, and defined legitimate charity. It was not until after the suppression of the monasteries and confiscation of the Guild lands that a new system became a necessity. So immediate was the want, that legislation ensued without delay, and it is interesting to mark the gradual education of the national mind to the necessity for compulsory alms-giving. At first the statute book makes as it were a mouthpiece of the parson and preaches charity. There is literally nothing more than this in 1 Ed. VI. c. 3.<sup>1</sup> In fact, throughout the legislation of this reign relating to poverty, there is merely a manufacture of the machinery which could set in motion private charity, and distribute its proceeds fairly and justly. One clause alone in 5 & 6 Ed. VI. c. 2 introduces the idea, but not the reality, of compulsory poor relief, since it empowers the clergy first to "gently exhort" the obstinate hinderer of charitable work, and then, in the event of persistent refusal, to covertly threaten him with episcopal "persuasion." In the succeeding reign, Mary, probably finding such measures wholly inadequate to cope with the growing distress, sanctioned the method of begging licences in parishes where the poor were too numerous to be properly relieved by the ordinary process.<sup>2</sup> On the accession of Elizabeth the whole system of compulsory poor relief is gradually unfolded. By 5 Eliz. c. 3 the bishop may not only persuade the opulent

<sup>1</sup> I am aware that Hallam cites 1 Ed. VI. c. 3 as empowering the bishop to proceed in his court against such as should refuse to contribute or dissuade others from contributing, but I think these advanced episcopal powers do not occur till 5 Eliz. c. 3, when the bishop can hand an offender over to the civil authorities. *Vide Const. Hist.*, ch. ii. (foot-note i.).

<sup>2</sup> 1 & 2 P. & M. c. 5.

to contribute weekly alms to the poor funds, but hand any obstinate fellow over to the civil authorities, who had it in their discretion to sess, tax, and limit him, and on further refusal commit him to gaol. The next step is in the provision of documentary evidence,<sup>1</sup> not only concerning the number of the pauper population in each parish, but the taxation and names of those compelled to pay the weekly tribute. It is interesting to note even thus late the survival of the old system of barter. There were many persons deemed sufficiently well off to contribute in kind, but to whom a money payment would have been a hardship; and since the collection of so many predial contributions would have caused considerable trouble and expense, certain of the poor were formally licensed to receive those offerings. It was strange that what had thus early struck the authorities as cumbrous and irksome should have survived in the case of tithe offerings up to the present century.<sup>2</sup> But then it must be remembered that no commutation was possible without legislation, and the clergy were never more afraid of attracting public attention to the tithe system than just after the spoliation of their monastic brethren. Then, too, the farmer, who was saved immense expense over carting, marketing, and selling the parson's share of his crops, much preferred the speedy quittance of this debt, which he annually obtained as soon as the tithebarn doors had closed on the last load of parson's sheaves.

In this same Act provision was made for an appeal from the assessment committee to the general county sessions; and lastly, the first germ of the workhouse system came into existence, when, by the agency of forced labour, rogues and vagabonds paid for their own keep during the few hours that they were allowed to remain in one parish.

Houses of correction<sup>3</sup> maintainable by the public, contri-

<sup>1</sup> 14 Eliz. c. 5.

<sup>2</sup> Up to 1833 the old system of course prevailed. The corn was cut, bound up in sheaves, and set up in hattocks consisting of eight sheaves. When ready for carrying, the farmer then sent word to the parson or his proc<sup>t</sup> the tithe. The farmer then removed his share of the

butions of flax, hemp, wool, thread, iron, etc., for pauper industry,<sup>1</sup> poor houses and hospitals<sup>2</sup> quickly followed, until at Queen Elizabeth's death the whole fabric of parochial relief, with its poor law officials, rate collectors, workhouses, asylums, and industrial homes was fully developed, and only needed the subsequent perfecting or altering touches which even now allow it to boast a precedence over all the scientific schemes periodically invented to take its place.

It is interesting to notice the various divisions into which the country was in turn subdivided for purposes of poor relief. By 22 Hen. VIII. c. 12 it was the hundred presided over by the justice. By 5 Eliz. c. 3 the parish, which had superseded the hundred, was further subdivided into chapelries, and then the chapelries, by 13 Eliz. and 14 Chas. II., were changed for the township. The collectors, overseers and governors who administered the funds were finally replaced by churchwardens and subsidy men, all of which early schemes formed the germ of our modern Union and Poor Law Guardian systems. Turning back to the old monastic tithe partition, it may be said without fear of contradiction that the era of the Reformation coincided with the time when a tithe of the land's produce, reduced as it was by the other religious sources of expenditure, could not continue to cope with the wants of a rapidly increasing pauper population. But surely real property, by means of tithe offering, had fully contributed its legitimate share, and it was now, if ever, the right time for the legislature to call upon personal property to contribute its quota to the national poor fund? The political power of the landed interest was paramount, and why the two houses of legislature, packed with the representatives of real property, levied fresh taxation on their own interest, is an enigma about which every reader interested in the land would like some explanation. It is possible that the royal exactions on personal estates, in the form of benevolences, percentages, and wool grants had squeezed this kind of property well-nigh dry. It is also possible that Parliament hardly realised the detrimental though indirect effects

<sup>1</sup> 99 Eliz. c. 3.<sup>2</sup> 18 Eliz. c. 8 and 39 Eliz. c. 5.

that the taxation of the land's produce would have on the land's owner. Lastly, it is more than possible, it is even probable, that the national legislators never presupposed such an injustice as that of charging real property a second time over with the entire support of a pauper population, two-thirds of which had been born and bred in the strongholds of trade.

An examination of the methods adopted in rating strongly favours this last supposition. "They shall tax and assess all and every inhabitant dwelling in every city, borough, town, village, hamlet, and place known, etc., etc.," says the statute 14 Eliz. c. 5. For a long time every judge's ruling was based either on this clause or on that in 43 Eliz. c. 2, which defines more clearly still the kinds of property taxable. "The rate," it enacts, "shall be made by taxation of every inhabitant, parson, vicar and other, and of every occupier of lands, houses, tithes, impropriate, propriations of tithes, coal mines, or saleable underwood." It is hardly possible to conceive that the intention of the legislators meant anything but the taxation of all kinds of property, personal as well as real. Judge after judge interpreted the Act thus. Market tolls were ruled taxable by Lord Chief Justice Hales. Market profits, goods in a shop, salt pits and sheds were included in the same category. "All things that were real, and a yearly revenue," was the definition of rateable property.<sup>1</sup> People were to be rated "according to their estates of goods known, or according to the known yearly value of their lands, farms, and occupyings." But though they might be taxed singly for either goods or lands, they were not doubly liable on both heads. Goods and lands were to be rated equally at 6 per cent., but the latter on their yearly value, not their area; liability for which charge lay on the occupier, and not on the owner. Nor was the land once rated in this way to be charged a second time, by taxing its rental.<sup>2</sup> A farmer was held liable to poor rates on his riches and stock if they exceeded that quantity necessary for carrying on the farm<sup>3</sup> and

<sup>1</sup> Resolv. 19.

<sup>2</sup> *Vide Legal Provisions for the Poor*, by S.C. (1710), who quotes from Lambert, Dalton, and Kebble. See also Burn, *On the Poor Laws*.

<sup>3</sup> See Jacobs, *Dict., sub voc.* "Poor Law."

paying the rent ; and the personal estate of the tradesman was also ruled as coming under the meaning of the Elizabethan legislation.

The reader has now only to refer to the modern system of rating to decide for himself how far the original intentions of Tudor legislators have been adhered to. The property now rateable is perhaps best defined by 6 & 7 Will. IV., intituled "An Act to Regulate Parochial Assessment," which, after reciting the desirability of establishing one uniform mode of rating and lessening the cost of appeal against an unfair assessment, enacts that no rate shall be allowed by any justices or be in force which shall not be made upon an estimate of the net annual value of the several hereditaments rated thereunto, that is to say, at the rent at which the same might reasonably be expected to let from year to year free of all usual tenant's rates and taxes and tithe commutation rentcharge if any, but deducting therefrom the probable average annual cost of the repairs, insurance and other expenses necessary to maintain them in a state to command such rent, provided that nothing in the Act contained should be construed to alter or affect the principles or different relative liabilities, if any, according to which different kinds of hereditaments were then by law rateable.<sup>1</sup>

It is quite clear then that the bulk of the nation's personal estate had evaded the charge. The merchant's wares, the tradesman's goods, the banker's bullion, and the manufacturer's profits had proved as variable as the shifting sand, and defied the best efforts of the assessor.

It would hardly be within the province of a land history to trace how the rate has come to be levied on real property only. It may however be concluded that since an Elizabethan law enacted that individuals might be taxed either on their goods or land, the merchant would prefer to pay the few shillings

<sup>1</sup> The term hereditament signifies any immovable thing, corporeal or incorporeal, which a man may have to him and his heirs by way of inheritance. It comprehends in its meaning both real and personal property, but it excludes that form of the latter known as chattels, which descends to the executors and not to the heirs. See Jacobs, *Law Dict.*, *sub voc.* "Hereditament."

assessment on his warehouse, than the many pounds for which he would be liable if his goods were assessed instead. Thus administrative difficulties, combined with a vague wording of the law, brought about results antagonistic to the landed interest. The substitution of a layman for a monk, either as landowner or as political representative, caused it no material hurt, but it indirectly suffered loss by the sequestration of its tithe, even though the bulk of this charge reverted into the hands of certain landed proprietors. Indeed, such a circumstance increased the mischief, for in all such cases it upset the ordinary standard of rental value between different districts. Thus the income of one parish, swelled by the tithe charges payable from some other parish, enabled the landlord of the former to reduce his rents and improve his lands at the expense of the landlord of the latter to a degree that must have eventually crippled his powers and capabilities in the same direction.

## The Tudor Period.

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### CHAPTER XXII.

#### THE GENERAL ASPECT OF THE COUNTRY, WITH ITS HOUSES, GARDENS, AND ORCHARDS.

ALWAYS pleasant as it is to wander forth into the country, it is doubly so when the brain is jaded with the dry topics of the Law Courts and the artificial life of a great town. Such should be the condition of any reader who has struggled through the last few chapters of this history, and who is now invited to leave for a while the busy scenes of mart and the dusty courts of law to accompany his author on a tour of inspection amidst the green lanes and verdant fields of rustic life. In Camden's *Counties* we have as it were a map and a picture in one; but with the graphic accuracy of an eye-witness and in the quaint language of the day, this writer conveys to his readers an impression of Tudor England far more lifelike than that which map and picture could furnish.

But before we can thoroughly enjoy the vivid colouring and sweet scents of wooded hill and nestling valley, we have still to traverse the dust of those ill-repaired tracks called by courtesy the king's highways. Far back in the now remote era of the British rule there were roads which, with the temples of the gods; and the ploughs of tillers, afforded "freedom of succour" to the fugitive from an enemy's vengeance or a country's justice; and it was with the object of clearly defining these particular words that Moluncius and his son Belirus, sovereigns of Britain, first introduced the term "King's Highway."<sup>1</sup> Henceforth the Fosse Way, leading from Cornwall to

\* *Vide Ranulph Higden, Polychronicon.*

Lincoln ; Watling Street, connecting Kent with the Irish Sea ; Erminge Street, stretching from North Wales to Southampton ; and Rykenild Street, bisecting the island by a line running east and west between the Welsh coast and Tynemouth, became known as the four royal highways and alone retained the above-mentioned privilege, which in the Norman and Tudor dynasties came to be termed "the King's Peace." These routes, unworthy of the name of "road" until Roman engineering genius took them in hand, were the great thoroughfares of the nation. During the Saxon era their maintenance and repair was, through the agency of the Trinoda Necessitas, constituted a public duty. But after the Norman Conquest up to the period under discussion, save for an easily evaded understanding that by Common Law to repair and maintain them was obligatory on the adjoining landowners, and that neglect to do so rendered the offender liable to proceedings by presentation in the Court Leet or Sessions, no public provision seems to have been made.<sup>1</sup> When, however, the attempt to devote a part of the confiscated monastic funds to road repairs failed, the spur of legislation was brought to bear upon those liable by tradition. Beginning with 8 Hen. VII. c. 5, and continuing throughout this king's life there are a series of laws referring to local highways chiefly in the neighbourhood of the metropolis, calling upon landowners to fulfil their long-evaded obligations. These statutes afford us a graphic description of the Tudor common ways. Those in the Weald of Kent, for example, were so "deep and noyous by wearing and course of water and other occasions, that people could not have their carriages or passages by horses, upon or by the same, but to their great pain, peril, and jeopardy." Those so near London as Charing were also "noyous, foul, and therefore jeopardous." Accordingly it may be concluded, as has been pointed out by Professor Rogers, that the best and most frequented highways

<sup>1</sup> Jacobs, *Law Dict.*, *sub voc.* "Highway." See also Craig and Macfarlane's *Hist. of Eng.*, Bk. V., ch. iv. In the absence of laws for the repairs of roads, it was also common for persons of substance to leave by will certain sums to be applied to this useful purpose.—Sir J. Cullum, *Hist. Hawsted*.

for carriage of goods were the rivers whenever their route, size and depth served as a waterway. Without examining Tudor road legislation *ad nauseam*,<sup>1</sup> we may cite the 2 & 3 P. & M. c. 8 as the first general statute for the repair of highways, which provided for the appointment of two surveyors and the boon services four days per annum of all the inhabitants in each parish.

The chief feature of all road legislation is the recognition of the land's liability by all the parties concerned in the transaction ; nor was there any hardship in this so long as it was the farmer's wagon which rendered the highways noxious and jeopardous. The introduction of tolls or turnpikes, however, in the reign of Charles II., initiates a fresh policy in road repairs, necessitated by the national rather than local use of certain thoroughfares, the maintenance of which could not have been with justice solely drawn from the pockets of those parishioners who were unlucky enough to live in their vicinity. But from 1773 to 1835, the highways other than turnpike roads continued to be repaired by the boon service<sup>2</sup> initiated by the Tudor statute already referred to. It would be an anachronism at this early stage to discuss the road legislation of the last half century, though it may be pointed out that there is a tendency, evidenced by the recent though abortive van and wheel tax, to dissociate the charge for repairs from the purse of the landed classes.

At length then opportunity occurs for examining the country along the routes of these highways. Starting then on the "Fosse Way," first of the four great roads already mentioned, the traveller would find himself traversing many Cornish valleys of indifferent glebe,<sup>3</sup> which the inhabitants make "rank and batch" with top dressings of orewood and

<sup>1</sup> There were six Acts referring to road repairs in Mary's reign, and nineteen in Elizabeth's.—Craig and Macfarlane, *Hist. of Eng.*, Bk. VI., ch. iv.

<sup>2</sup> Glen, *Law relating to Highways*, Bk. I., ch. iv.

<sup>3</sup> The whole of the topographical sketch which ensues is taken from information contained in Camden's *Counties*, which work was probably written during the reigns of Queen Elizabeth and King James I.

sea-sand. Occasionally he would glance downwards on the trenches of stream works or upwards at the shafts of lode works where was proceeding the breaking, stamping, drying, crasing, washing, melting, and fining of the tin miner's industry. Thence he would pass amidst the low valleys and wooded ridges of Devonshire, and note "the lean and barren soil" on which the husbandman spreads with success the "fertilizing sea-sand." Onward stretches the great road into populous Somerset with its rich pastures and cornlands dotted here and there with stony hills. Though worthy of its name's derivation during the summer months, the county is "wet, weely, miry, and moorish" during the cold season, so that the winter traveller is glad to reach Tetbury and cross into the rich and sheltered vale of Gloucester, where the highways and common lanes are bordered with pear and apple trees of nature's sowing, the fields fruitful in corn and grapes, the forests productive of iron, and the hills depastured by the best fleeced sheep in the world. Thence onward into the county of Warwick, where the river Avon parts the "Feldon" from the "Woodland." The former is rich in corn and green grass, amidst which stand those mercats for sheep and kine, the towns of Shipeton and Kinton. The latter is "thickset" with woods, and yet not without pastures, cornfields and "sundry mines of iron." Here the traveller might rest a night at Coventry, a town even then "growing wealthy by clothing and making of caps." Forward runs this king's highway through the champaign country of woodless Leicestershire, where the people have an "ill-favoured, untunable, and harsh manner of speech, fetching their words with very much adoe deepe from out of the throat with a certaine kind of wharling." Passing on the south side distant Harborough, celebrated for its cattle fairs, the wayfarer crosses Watling Street, whose Roman engineering shows hereabouts traces of time's wear and tear. The road now debouches upon the wild plains of Notts, then trends away skirting Sherwood forest and across the Trent to Newark, and so on through pastures and cornfields to Lincoln, beyond which cathedral city lies the impassable and boggy Holland, on cultivated parts of which, reclaimed

from the fish and wild fowl, the horses draw their loads over the soft stoneless soil unshod.

Turning once again to the southern counties, the reader might in a similar fashion trace out the route of Watling Street. Starting amidst the Kentish orchards, whose cherry trees invaded England with Julius Cæsar,<sup>1</sup> he leaves on his left that "seagift" of rich pasturage called Romney Marsh, and skirting the choice fruit gardens of Tenham recently planted by Richard Harris, Henry VIII.'s gardener, he might wander onward over the fertile Thames valley through the western suburbs of London to St. Alban's, and so on past Dunstable, Shakespeare's birthplace, and the Wrekin into Wales.

Abandoning now the great main routes, let us examine those parts of the country interesting, on account of some special feature, to the student of Landed history. There were localities devoted to now extinct industries; and there were others whose landed proprietors little dreamed of the mineral wealth lying hid beneath their feet. An example of the latter case was Lancashire, most of whose world-famed seams of coal were as yet intact. That part of the county adjoining Cumberland was wholly devoted to agriculture. Its plains bore mighty crops of barley and wheat; its hill skirts yielded oats; its inhabitants were "faire and beautiful," and their kine "well-proportioned, with goodly heads and faire spread hornes." About the upper reaches of the Mersey were situated the mercantile towns; lower down lay the moss grounds, out of which men frequently dug huge trees which served for fuel. The river, when just about to join the sea, opens out into a wide pool which has furnished a derivation for the town's name at its mouth, even then a frequented port for Irish commerce. But though the coal lay undisturbed in this county, up away in Northumberland towards the mouth of the Tyne "those stones called sea coles were dug in great plenty to the great gaine of the inhabitants and commodity of others." The mineral was no doubt the more valued from the fact that in this region of the Marches agriculture could be practised with difficulty, for all the land was "rough and hard," and of

<sup>1</sup> A.D. 48.

necessity everyone was a warrior and every house a fort. The adjoining county of Cumberland, though considered cold, was said "to smile upon its beholders." Its mountains standing thick together "were rich in metals, and in its valleys were great meeres stored with all kindes of wildfowle." Here and there occurred "pretty hills good for sheep pasturage," and beneath them "goodly plaines, yielding corne sufficiently." Among the fells hemming in the river Derwent were copper mines and supposedly veins of gold and silver, the false discovery of which caused a famous lawsuit between Queen Elizabeth by right of her prerogative and Earl Percy by right of his lordship which, like the supposed ores, resulted in nothing. Not so, however, the discovery of black lead, that "hardened glittering stone" which was soon to replace silver point among English artists. Not lingering to expatiate on the unfruitfulness of Westmorland, we may pass on into Durham, whose clammy kind of clay, supposed by Camden to have been hardened by heat, yielded a smell of bitumen, burnt vehemently when besprinkled with water, and was hard, bright, light, and easily cloven into flakes. The author was no doubt right in identifying it with the "canole coal" of other parts. Other counties had their mining industries. Thus there were coal pits at Ashby in Leicestershire; copper mines as early as Richard III. at Wenlock, and a fountain of bitumen at Pickford, both Shropshire towns. The Peak country yielded lead, iron, and coal. Sussex resounded with the water-driven hammer mills and crackling wood fires of the ironfounder. The neighbourhood of Birmingham was even then disturbed by the incessant clank of hammer on anvil. Salt springs had already been discovered and worked in the vicinity of Nantwich. Beer had early selected the centre of England as its future home, since the Derby of Camden's age was celebrated for its "nappie ale."

The Essex coast, which had supplied the Roman kitchens of Pliny's time with oysters, was then as now celebrated for the excellence of its native bivalves. Norfolk, as yet without the turnip, was more renowned for its breed of lawyers than its husbandry, who, according to Camden, "could fetch contro-

versial matter of the very prickles, titles, and accents of the law." Cambridgeshire farmers, not yet sufficiently educated to combine the principles of pneumatics and hydrodynamics with any practical results, traversed their lands on stilts. During the drier months of the year their cattle battened on the herbage of the grass fen, the superfluous growth of which they fired just before the autumn floods, so that the glare of the vast plain startled the flocks many miles away in the sheep walks of Norfolk and Suffolk. They were uncouth fellows, these lowland stilt-walkers, who made the most of their aquatic vegetation by plaiting baskets out of its willows, burning its peaty turf in their cottage reredos, and thatching their roofs with its water grasses, while every dyke and ditch afforded them fish and fowl for the table.

Throughout Camden's great work there is frequent mention of ruined abbeys and castles, forcibly and graphically emphasising the decay of both monasticism and feudalism; and it will be now interesting to watch the growth of a Tudor architecture, which quite as graphically emphasises and fitly introduces a fresh polity, and a coincident departure from the time-honoured precedents and customs hitherto associated with the landed interest.

During the Middle Ages there was probably no distinctly architectural profession, and buildings were planned by master masons, guilds of workmen, or bodies of freemasons. The feature of this era had been a religious mysticism which left its stamp even on the building trade. But the Renaissance architects took their cue from the altered religious views of the times which Henry VIII. had initiated by the destruction of Church property, and the religious element was henceforth eliminated even from the plans of churches and tombs. Fresh ideas borrowed from Italy, Germany, and the Low Countries, were introduced by foreign architects, and worked out by foreign trowels. Torrigiano came over as early as 1506. Holbein, Gerome de Trevisi, Lucca Penni, and John of Padua found a patron in Henry VIII., the last-mentioned artist having, it is said, designed Longleat, and both Sion and Somerset Houses. In the following century Bernard Janssen, Thorpe,

Holt, the two Stones, and Inigo Jones were the chief architects. Many great landowners sent their builders to study in Italy, and often imported foreign workmen to carry out the designs that they brought back. The old mystic and symbolic system of the former style was sometimes carried over into the succeeding Renaissance architecture, though in future it was more often prompted by loyalty or egotism than by religion. Accordingly the Tudor draughtsmen shaped their ground plans into anagrams and parabolic figures. John Thorpe, for example, designed a house whose basement formed the initial letters of his two names, and others showed their loyalty by adopting as a ground plan the E which formed the first letter of their sovereign lady's name. Buckhurst, part of Knole, Kirby Hall, Holdenby, and Wollaton were built by Thorpe. The last named, belonging to Sir Francis Willoughby, is especially interesting, since it probably initiated the foolish custom of erecting by means of funds derivable from mineral royalties an edifice out of all proportion to the size of the estates, which could but prove an endless source of extravagance to less wealthy successors, who would derive no benefit from the exhausted mines, and could ill afford to keep up the state required by the great block of building. Holt designed many of the Oxford colleges, which, unlike most of his work for private persons, have survived the ravages of time. The elder Stone built Lord Danby's house at Cornbury, and carried out many of the designs from the pencil of Inigo Jones. The latter, born in 1573 at Smithfield, studied in Italy, acquired his reputation in Denmark, and on first settling in England employed his talent in designing theatrical costumes and scenery. His work properly belongs to the succeeding Stuart period, as he did nothing great in architecture before 1615. He is supposed to have designed part of Whitehall, the porch of St. Mary's, Oxford, a portion (since burnt) of St. Paul's, Houghton Hall and Dorfold in Cheshire, Castle Ashby, Stoke Park, Amesbury, Gunnersbury, and other country seats of the landed gentry; but, like the works of other early Renaissance architects, fire and storm have swept them away. The lesser gentry seem to have clung fondly to the old Gothic style; and

their manor houses continued to consist of the hall flanked on either side by protecting wings, a courtyard at the back, and long low lines of roofing broken by dormer windows and gables.<sup>1</sup> Harrison describes the new houses of the nobility as commonly constructed of brick or stone, and states that glass windows were beginning to be used.

It was part of an architect's duties to lay out the gardens; an admirable arrangement, for nothing more tends to show off the bricks and mortar of the buildings than the harmonious surroundings of terrace, panel, and flower bed.<sup>2</sup> At the beginning of the period under discussion, the gardens were generally walled. Such were those at Nonsuch, belonging to Henry VIII., and those at Theobalds, which, though long obliterated, like most other early Tudor gardens, still exist in the imagination through the description handed down by the German Hentzner. We can picture the statues along the terraces, the walls covered with rosemary, the neatly trimmed yew, holly, and lime hedges, the trellis walks with the yew bushes shaped into cones and pyramids, the fountains and summer houses, and the geometrical flower beds. Thanks to the Flemish settlers in Norfolk, the latter were soon to be a blaze of colour with the gillyflower, the carnation, and the musk, damask, and Providence roses, which were introduced during the latter half of the sixteenth century. Separated from these pleasure grounds was the higher walled fruit garden, where probably would be found the pear, apple, peach, quince, almond, cherry, and filbert trees. Perhaps, too, there were a few plums, introduced by Thomas Cromwell about 1510. Even some of the Zante currants might have taken root there, thus early acting as pioneers for their later invasion of these shores in 1588.<sup>3</sup> Pale gooseberries and pippins, recently introduced, would no doubt have found their first resting-place in the royal gardens of Nonsuch.

These Tudor pleasures were after all but a replica of those

<sup>1</sup> *Vide* R. T. Blomfield's three articles in *The Portfolio* of 1888, on the Architects of the Renaissance, to which I am indebted for my information.

<sup>2</sup> *Vide* R. Blomfield's article in *The Portfolio*, 1889, p. 231.

<sup>3</sup> Craig and Macfarlane, *Hist. of Engl.*, Bk. VI., ch. iv.

described by Pliny the Younger, which had survived up to this date in Italy, and came over to these shores with the Renaissance architects. It would have been better for their owners if they had looked up the original description, since they might have been induced to search for some of the esculents mentioned by this ancient historian. The weak point of a Tudor garden was undoubtedly its store of vegetables. Queen Catherine had to send all the way to the Hague when she wanted a salad.<sup>1</sup> The potato was only just being experimented upon by Raleigh in Ireland. Turnips<sup>2</sup> were not to be introduced for another century. Carrots, which Pliny had probably eaten in Candia, and which Gerarde, who lived at the latter end of the Tudor era, had mentioned as cultivated in Germany, were yet to arrive in these islands. Leeks, though mentioned by Shakespeare, did not widely establish themselves in English soil till after their importation from Switzerland in 1562. The artichoke was only just coming into use; and save onions, cabbages, cauliflowers, broccoli, the recently imported hop, possibly parsnips, wild strawberries and a plentiful variety of herbs, it is doubtful if the closest search could have brought to light any other growth except weeds, under the branches of the fruit trees in the Tudor orchard. That attention was being now concentrated on the improvement of gardens is patent not only from the introduction of fresh plants and seeds during this particular century, but from the superior class of men employed as gardeners. John Gerarde, who began life as a surgeon, was Lord Burleigh's chief gardener during Elizabeth's reign, and boasted of tending the best collection of plants in the kingdom. He not only introduced into his master's garden many choice exotics, but set up a large botanic garden at Holborn, and published a catalogue of its 1,033 species. This *Herbal*, printed in folio in 1597, is supposed to have been an enlarged and translated edition of the old work *Pemptades*, written by Dodonæus.<sup>3</sup> Be this as it may, there is no doubt

<sup>1</sup> Hume's *Hist. of Engl.*, ch. 23.

<sup>2</sup> Tusser mentions, however, turnips as a kitchen-garden root to boil with butter.

<sup>3</sup> Rees, *Cyclo.*, sub voc. "Gerarde."

that we owe to Gerard a new departure in the annals of English gardening, and an intimacy with Elizabethan plants which neither Peacham's *Emblems* nor any later writer's works could afford us. He knew everybody, and corresponded with both foreigners and countrymen, benefiting therefrom so as not only to procure fresh exotics, but to foster scarce indigenous plants in his suburban garden.

Beautiful though the Elizabethan manor houses and their surroundings undoubtedly were, their interior economy was not so inviting. Indeed, before this period it had been positively disgraceful. Uneducated people never take kindly to sanitary improvements. Even the clever Harrison<sup>1</sup> railed against the introduction of oak timbers and chimneys. He preferred the old willow-built hovels, and alleged that the ancient oaken men had not only become willow, but a great many altogether straw. The smoke, he said, used to harden both the man and his house timbers, preserving the former from the hands of the quack.<sup>2</sup> Up to the later Tudor period the yeomanry lived in timbered houses, whose walls were formed of wattled plaster; they slept on straw pallets, with chaff bolsters, covered with coarse sheeting; their servants slept on straw with no covering at all. They ate their meals from wooden trenchers, and ladled their pottage into their mouths with wooden spoons. The clay floors were strewn with rushes which only served to conceal an ancient collection of beer, grease, bones, and everything nasty. Up to 1526 even the king's scullions, who went naked or in vile garments, and lay about the kitchens night and day on the ground close to the fire, were very offensive. Erasmus ascribes the "sweating sickness" which constantly visited England to the "incommodious houses, the filthiness of the streets, and the sluttishness within doors." There is then no wonder that Wolsey, when he went to Westminster Hall, was wont to conceal a sponge saturated with essences in the skin of an orange, "into the which he smelt to avoid the pestilent odours from the suitors."<sup>3</sup>

<sup>1</sup> Harrison, *Description of England*, i. 212, col. 1 (written about 1560).

<sup>2</sup> *The Babees Book*, p. lxv., edit. F. J. Furnivall, Early Engl. Text Soc., 1868.

<sup>3</sup> Id. *Ibid.*, p. lxvi.

Some of the old surveys in the reign of Elizabeth contain illustrations of village buildings. Mr. Hubert Hall, in his *Society in the Elizabethan Age*, gives a coloured illustration of an Elizabethan hamlet, taken from the original plan of the manor of Bradwell in Essex.<sup>1</sup> The few houses scattered over the small fields give the impression conveyed by Cæsar when describing a Germanic village. The parish church at one side, and the chapel of ease at the other, point to the freshly instituted subdivision of parishes into chapelryes; the highway terminating at the parish church vividly illustrates the isolation of country life, and the three shades of green and one of brown are intended probably to distinguish the different kinds of cultivation.<sup>2</sup> The chief features of the houses that composed the hamlet were the enormous chimneys to which the rest of the small building seemed attached as an afterthought, though the reverse was probably the state of affairs; the windows were mullioned, the roofs tiled, and the one or two rooms all on the groundfloor. It is interesting to note that even thus early thatch had been replaced by other materials. A copyhold house was only distinguished from a copyhold cottage by its greater size, its red roof, and its enormous chimney stack. Even the better building could not have consisted of more than two rooms, the smaller of which occasionally had a lower roof and was probably a subsequent addition. The copyhold barn consisted of a plinth of brickwork timbered above with a thatched roof.

The plan shows no traces of gardens about any of the houses, though probably there was an odd half-hidden corner to most of them which would be devoted to herbs, if not onions and cabbages. The hedgerows of the fields appear full of trees, many of which were likely to have been the common species of fruits, such as apples, pears, and quinces. Further and more minute details, though adding to the picturesqueness of the hamlet, would have scarcely been considered proper or useful

<sup>1</sup> *Society in the Elizabethan Age*, 3rd edn., pl. 1.

<sup>2</sup> The green commons were coloured dark green on the Hitchen manorial map, and the Lammas meadows light green. *Vide* Seebohm, *Engl. Village Community*.

accessories to the business-like purposes for which this manorial plan was drawn by some Tudor surveyor.

From Harrison's description of the English buildings we may conclude that the greatest part of our cities and good towns consisted only of timber cast over with thick clay to keep out the wind. "Certes," he says, "this rude kind of building made the Spaniards in Queen Mary's days to wonder, but chiefly when they saw that 'large diet' was used in many of these so homely cottages, insomuch that one of no small reputation amongst them, said after this manner:—'These English,' quoth he, 'have their houses made of sticks and dirt, but they fare commonly so well as the king,' whereby it appeareth that he liked better of our good fare in such coarse cabins, than of their own thin diet in their princely habitations and palaces. The clay with which our houses are commonly empanelled is either white, red, or blue."<sup>1</sup>

<sup>1</sup> Harrison, *Description of England*, Bk. II., ch. 12.



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### CHAPTER XXIII.

#### ESTATE ECONOMY.

THERE are several writers of the sixteenth century whose works have survived up to our times. These afford us accurate and sufficient data for a graphic description of the rural economy practised at the period when they were published. Sir Anthony Fitzherbert<sup>1</sup> wrote his *Book of Husbandry* about 1534, and his *Book of Surveying* a year or two later; Sir Richard de Benese his work on Land Measurement about 1537; Thomas Tusser his rhymes, containing 500 points of good husbandry, about 1573; Reginald Scot his *Perfite platforme of a Hop Garden* in 1574; Barnaby Googe his *four Books of Husbandrie* 1577; and Harrison his *Description of England*, a little earlier. Googe's work is principally interesting for the list of writers which he gives as his authorities, many of whose books have long perished. Without recording his formidable list of classic writers we shall be content with enumerating those of a later era, many of whose names have a Dutch ring, but most of which sound English enough—

S. Nich. Malbee.	M. Hen. Brockhall.
M. Capt. Byngham.	M. Franklyn.
M. John Somer.	H. Kyng.
M. Nicaf Yetzvvert.	Richard Andrevves.
M. Fitzherbert.	Henry Denys.
M. VVylli Lambert.	VVylliam Pratte.
M. Tusser.	John Hotche.
M. Tho. VVhetenhall.	Philip Partridge.
M. Ri. Deeryng.	Kenvvorth Datforth.

<sup>1</sup> Sir A. Fitzherbert was one of the Justices of the Court of Common Pleas, and had practised agriculture forty years. There is no need to confuse his identity with that of his brother, though some have done so.

Googe's treatise has been somewhat neglected by later agricultural writers owing to a not wholly justifiable prejudice that it is more or less a transcript from a German work on husbandry.<sup>1</sup> Sir A. Fitzherbert's writings are undoubtedly the most valuable of those still in existence; but even he has helped himself largely to the information contained in Walter of Henley and other thirteenth-century authors, and possibly he may have also freely plagiarised portions of those extinct Flemish or English works which Googe has cited as his sources of information. Nevertheless enough is known of Fitzherbert's life to insure for anything that he says, either on law or agriculture, a most respectful hearing. In addition to the works already mentioned, there have been experts<sup>2</sup> of the present day who have placed on paper the results of long and careful research into the archives of our public record office, museums, colleges, universities, and libraries which afford additional and valuable data for the purpose in hand.

Separating then the mass of information thus obtained under the headings of Land Management and Agriculture, we propose to treat these two subjects in the order named.<sup>3</sup> When the internal economy of a landed estate was last discussed, it will be remembered that the management was in the hands of a large staff of officials, rising gradually in the social scale from the various lowly herdsmen to the exalted personage known as the seneschal. It is probable that the latter individual was still indispensable to the wealthy owner of an Honour or group of manors, though he might be known under the less pretentious term of supervisor or surveyor. One of Fitzherbert's works is undoubtedly intended as a useful handbook for officials of this class, and is for all practical purposes an advanced *tréatise* on

<sup>1</sup> Googe's allusion to a car armed with sharp sickles is the first mention of the mechanism of a reaping machine.

<sup>2</sup> Hubert Hall, *Society in the Elizabethan Age*; Thorold Rogers, *Prices and Agriculture*, etc.

<sup>3</sup> Mr. Thorold Rogers, in his works on Agriculture, has given a brief epitome of Fitzherbert's treatises. In order to avoid clashing with his arrangement of history, I shall describe the land tenure and agriculture of the period in general terms, giving references to the authors whence I draw my information.

Elizabethan estate management. There were two distinct species of the genus land-agent in those days, and it is sometimes hard to distinguish the one from the other. Besides the individual already described in an earlier chapter, there was the steward, who often performed the more important household duties of a modern butler, besides the buying, selling, measuring, valuing, and appraising of his master's lands and livestock. Just as the first-named species was neither wholly a lawyer, a banker, a surveyor, or a steward, but a mixture of all these professions, so also the latter was neither an estate agent, a butler, nor a bailiff, but a compound of the three. It would seem to have been vastly more essential then than now that both varieties of agent should have been well versed in legal lore; for, together with the new trading blood, a litigious element had entered into the character of the possessors of the soil. Up to this period we have traced the sub-tenant's gradual climb into fixity of tenure. In 1449 he, as leaseholder, had secured a further and securer foothold by means of the legislation which allowed his lease to override a purchaser's deed. Again in 1469 he rose a step when the law protected his property from the clutches of his landlord's debtors; and his cherished copy of the court roll, even if it had not formally received the recognition of the statute book, had at any rate long entitled him to trespass claims against his lord for dispossession. But the commercial instincts which had been brought to bear upon the land by the recent change of owners, now stimulated the ci-devant traders to win back by fair though sharp practice all that had been ceded during the past centuries. There were no traditions to check the fresh lord's proceedings; and tradition was the very pith of the complex system of land tenure in existence. Services rendered in the remote past by one side or the other had established hereditary claims which found indelible expression in the manorial customs of the court roll. Why should the new master carry out a system of land tenure that shocked his business-like instincts of justice? What had he to do with pepper-corn rents and widows' claims for free bench? There were all the confusing results of a land tenure based on feudalism, without any

of the memories which could alone render it intelligible. The land had long ceased to be viewed in the light of a military fee. The fresh owners had acquired it by purchase, not by descent, and the prosy inducement of commercial speculation had preponderated over the sentimental and social elements of the transaction. It was true, no doubt, that the knight service, the homage, the fealty, the escuage and suit of court might be tolerated for the sake of the ocular evidence that they afforded as to the new man's increased social importance; but his phlegmatic trading spirit called out against the inequality of the various rents. Here was a freeholder who paid according to his charter a minimum in money and a little pepper for his holding; there was another paying double this for less and inferior land. Here was one, who by copy of court roll rendered part payment in money, part in capons, and was liable to a heriot; another, who held a cottage and curtilage in exchange for an annual sparrow-hawk, and a third who paid as an equivalent something equally useless or insignificant. The town-bred individual who became landlord had known hitherto but one medium of exchange, and it was natural that he should be anxious to convert every one of the above services into its money equivalent. Recourse therefore was constantly had to legal subterfuges. The copyholder was always before the law courts. At one time it was under the pretext that he had omitted a service, or transgressed a right contained in the original court roll. The unlucky wight would produce his cherished copy and prove his case; but woe betide him if under a skilful cross examination he was entrapped into some contradictory and far from intentional admission damaging to his tenure.<sup>1</sup> The customs of some manors had become so complicated and inconvenient as to have induced the several parties to revise and renew them in a court especially assembled for the purpose. Frequently some new lord, by refusing to be bound thus, not only annulled the later record, but was legally entitled to confiscate the older tenant rights, which, to be binding, must have been of immemorial usage.<sup>2</sup>

<sup>1</sup> Mr. Hubert Hall gives many instances of these lawsuits.—*Society in the Elizabethan Age*, The Tenant, ch. iii.

<sup>2</sup> Id., *Ibid.*

It was for these reasons that both supervisor and steward were ill qualified for their respective offices if they had not acquired a legal training. A student at Gray's Inn, possessed of an hereditary connection with some estate, stood a good chance of preferment to its vacant stewardship. The appointment does not seem to have been highly lucrative, for the salary was a few shillings a year augmented by a few acres of low-rented land and the fees from all the courts leet, courts baron and manor courts on which a steward had to sit. It is conceivable that this office, which even in modern times brings its holder a good deal of popular opprobrium, must have been in the uneducated Tudor days almost untenable by reason of unfounded charges, such as fraud, favouritism, extortion, and the like. As his only refuge therefore from such hostility, the steward seldom thought it his duty to see more than his employer's side of every question—an unwholesome condition of mind in one whose business relationship involved both parties to every transaction, and who was alone in a position to represent matters to his master in their true light.<sup>1</sup>

But if the fresh commercial blood had let in upon the land a flood of litigation, it had also introduced a flood of fresh knowledge. The English soil had been brought into touch with foreign agricultural improvements by means of its trade connection. It was not only through the importation of the potato, clover, and other useful plants, that agriculture came to the front during this century. Merchant adventurers brought back from abroad foreign ideas of husbandry. The Flemish especially afforded an inexhaustible source of information on this head. They taught the Tudor Englishman many of his trades, filled his gardens with plants delightful to both taste and smell, and by the introduction of root crops and other vegetables supplied his table with fresh meat and antiscorbutic green food throughout the winter. Not only were we at this epoch their inferiors in agricultural and horticultural knowledge, but our municipal buildings were architecturally not to be compared with the Flemish commercial halls of the

<sup>1</sup> *Society in the Elizabethan Age*, ch. ii., The Steward.

same date.<sup>1</sup> In sole return for all this we seem, according to Tusser, to have constantly sold the Fleming our diseased pork already salted and pickled.

Turning now to an English estate of the period, we shall be content with a cursory glance at the beautiful Elizabethan manor house, with its two cross chambers and central hall of stone, brick, or timber, its barns and outbuildings, and its surroundings of garden and demesne. We pass on to examine the distribution of the land amongst the lord and his tenants, and see how the system worked. The tenants themselves are easily recognisable, though changed both in name and circumstance, since last we discussed their life during the old mediæval era. The base tenure of the villein may still cling as an expression to the position held by the copyholder, but it signifies no more than an expression to an individual who, though originally holding his parcel of land at the will of his lord, could flourish his copy of court roll in the face of any aggressor who attempted to dispossess him. So is it also with the cottagers and all the smaller fry of the estate. They still pay their curious mixture of rents and produce for the self-same cottages and curtilages that their forefathers held of yore; but they are (especially if they choose to hire themselves out as labourers) far more prosperous and far more secure from violent or arbitrary action than in the old days of their serfdom. There is also much the same old system of land distribution. Every substantial man of the township has "lands" in the infield, but no two of them adjoin, and never more than two or three are in the same division. In the meadow land of the township, the lord, the parson, the freeholders and the other tenants share unequally the various plots. Here may be seen staked out the four acres of the lord, and next to them the two of some freeholder.<sup>2</sup>

Lastly there was the common pasture, of which there were three kinds, viz. one taken in out of the fields by all the tenants of the township in the which every person was stinted;

<sup>1</sup> Thorold Rogers, *Prices and Agriculture*, vol. iv., p. 69.

<sup>2</sup> Fitzherbert's *Boke of Surveying*: Parish of Dale.

a second in the plain champaign<sup>1</sup> country where each person was, or should be, stinted according to the size of his holding ; and the third, the lord's waste, where he alone was unstinted. This practice of stinting on common pasturage was no doubt salutary for the poorer cattle owners, for without some such restriction the wealthier tenant would have bought up all the stock he could lay hands on in the spring, run them through the summer on the common pasture, and fattened them off for market on his own aftermath, meanwhile leaving the first-named pasturage too bare to support the other livestock, viz. a few beasts which belonged to each poorer tenant. As regards, however, the waste, its lord who considered himself sole owner, refused to be hampered by any such restrictions, and stinted the rest of the community's cattle, or charged a capitation penny for every hog's pannage, without incurring any imputation for rapacity.

All this, however, was not in itself contrary to the principles of communal agriculture as modified by the manorial system. The time however had arrived when shrewd observers, both on the Continent and in England had begun to see defects in the old popular method of agricultural economy. Under a sense of fairness the original distribution of each individual's holding had been, as already stated, scattered throughout the great common field of the township. Now however it was seen that enclosed lands would pay a farmer better. The "acres," taking the word in its original sense, would be more servicable all in juxtaposition and surrounded by one common fence, than as they were then, widely separated. But in order to make the alteration, popular rights of common husbandry would be seriously affected, if not destroyed. Isolated attempts to alter the common field system brought up the whole question of landed economy. In the first quarter of the sixteenth century the German peasantry rose in multitudes and demanded the abolition of serfdom, the restoration of all the ancient popular rights over waste and forest, and the appropriation of the tithe, after maintenance of the clergy, to the support of the poor. Robert Ket, the tanner of Wymondham, imitating the example

<sup>1</sup> Champaign or campaign signifies open country.

of his foreign brothers, rallied 16,000 men to armed resistance under a similar pretext in England. Mixed up with these mundane causes of insurrection was, in both cases, that of religious grievance. Luther and other Protestants had succeeded in freeing the popular conscience, and the Reformation had stirred up a desire for liberty in things secular as well as sacred. The result was that the German and English peasantry refused to release the grasp they still retained on the soil unless at the same time emancipated from seignorial jurisdiction. Both risings proved abortive, probably because in each case the leading agriculturalists of the villeinage had come to recognise that the common field system was inimical to the interests of good husbandry. The Norfolk labourers however, for at least a century after, claimed the right to throw open all field gates on Lammas day, and unless compensated in some other way, to depasture their livestock on any or every enclosure in the township. But the pioneers of the movement in England recognised that henceforth the old seignorial rights over the people had become obsolete, and as soon as the enclosure system had begun to replace the common field economy, men like Norden and Hartlib set about picking holes in the seignorial economy and thus helped forward for the final abolition of serfdom. But at this early stage of the enclosure movement men were content to confine the controversy to the best means of ameliorating husbandry. Fitzherbert, who wrote nearest to the times of Ket's rebellion, sets himself to the task of replying to arguments against the separate farming system. Besides the lower grades of the villeinage, educated champions of the old economy, like Spriggs, asserted that the enclosure would ruin tillage and depopulate England. To such, Fitzherbert in answer asserts, that "one several close" as he terms it, for the arable land, another for his "leyse," a third for his portion of common pasture, and a fourth for meadow, would enable a farmer to treat his land more generously and use it all through the year instead of at those short periods when it was not common pasturage.<sup>1</sup> Beasts that grew thin-haired and unhealthy in

<sup>1</sup> I am speaking of the Lammas day arrangement already described in a former chapter.

the winter shed could flourish better under the shelter of the new hedges, and even the cottager would be better off with a tiny enclosure than when his thin beast was cropping a precarious livelihood horn with horn on the common. Then, argues Fitzherbert, see how the separate field system would facilitate cultivation! If his corn in the arable field looked bare, he could break up the leyse or pasture ground and grow some there instead. Even the wood in the hedgerows would be a source of profit, and there was the saving of a small fortune in the board, lodging, and wages of herdsmen who would be rendered unnecessary by the new process.<sup>1</sup> Then, lest he should be accused of taking the bread out of a poor man's mouth, and remembering the rebellion of King Edward VI.'s reign, Sir Anthony ends up with the suggestion that the now useless herdsmen, whom Tusser has aptly named the "fences" of the commonable land, could be put on to get, ditch, hedge and splash quicksets, whereby our author somewhat invalidates his previous contention that closes would save the farmer's pockets in keep and wages of this class. At first sight it is rather a shock to a nineteenth-century farmer's ideas to read Fitzherbert's airy suggestion as to ploughing up the good turf of the leyse and pasture fields. But this was the time when from the reign of Henry VII. to that of James I. the legislature was constantly called upon to encourage tillage at the expense of pasture. "Where in some towns," enacts the 4 Hen. VII. c. 19, "two hundred persons were occupied and lived of their lawful labours, now there are occupied two or three herdsmen, and the residue fall into idleness." Under a penalty of forfeiting half the profits to the lord of the fee, all who for three years had held farms containing 20 acres of arable land, were made to uphold them as such. On account of the enormous increase in the price of wool, which seems to have been attributed to what is now vulgarly termed "cornering the market," no one from 1533<sup>2</sup> was allowed to keep more than 2,000 sheep, and about

<sup>1</sup> Tusser in his rhymes on the work of July, breaks off to compare the disadvantages of the "Champion Country" with the advantages of the "Several."

<sup>2</sup> 25 Hen. VIII. c. 13.

the same period the exportation of wool was prohibited. From 1597 by 39 Eliz. c. 2 arable land made pasture since 1st of Eliz. was to be reconverted to tillage, and that still under the plough was to remain so in future.

The effect of this general tendency to discard the plough was naturally to enhance the price of corn. The State therefore turned its attention to restricting its exportation and artificially lowering its home market value.<sup>1</sup> This action of the legislature might have prevented the rising want and discontent amongst the smaller class of farmers. There was a popular saying of the times that "it was never merry with poor craftsmen since gentlemen became graziers." Then, too, Fitzherbert's ideas about closes had taken root, and the farmers were exchanging their scattered "acres" in the infield for that landowner's ideal, a "ring fenced" holding.

But legislation soon checked the practice of laying down land to pasture, and as soon as the soil became once more arable there was work and bread for everybody. Simultaneously the statute book records the change, and a dozen laws follow in quick succession, lowering the restrictions on corn for exportation, so that the price at which wheat was allowed to be exported, rose successively from 6s. 8d. per quarter in 1553, to 10s. in 1562, to 20s. in 1593, to 26s. 8d. in 1604, to 32s. in 1623, to 40s. in 1660, to 48s. in 1663, and to almost entire freedom from restriction in 1670.<sup>2</sup>

The value of wheat during the sixteenth century varied considerably. In 1499 it was 4s. per quarter, and in 1521, 20s. During the fifties it kept pretty steady at 8s. In 1574 it leaped up to £2 16s.; in 1594 it was again at this famine price, and in 1597 it reached £5 4s. and kept high till the end of the century.<sup>3</sup> The effect of the later Elizabethan Corn Laws, and indeed even the statute of 1552 against forestalling, regrating, and ingrossing, though it not only stopped its exportation and spoiled its home trade, had no effect on its market

<sup>1</sup> By the statute against forestalling and ingrating, 1552, 5 and 6 Ed. VI. c. 14.

<sup>2</sup> *Encyclo. Brit., sub. voc. Agriculture.*

<sup>3</sup> Adam Smith, *Wealth of Nations*, Appendix, bk. 1.

price. Farm rents rose generally in the reign of Henry VIII., an event which cannot be better illustrated than by relating the personal experience cited by Latimer in one of his sermons. The preacher's father, who as a yeoman, though possessing no land of his own, held at a rent under £4 per annum, a farm containing sufficient land to employ six men, and carry a hundred sheep and thirty cows. He sends his son to school and college, dowers his daughters with £5 each on their marriage, provides the king a horse and man, entertains his neighbours and supports the local poor out of the proceeds of cultivation. His son succeeds to the same tenancy at about the same time as Henry VIII. did to the throne. He pays four times as much rent, and his profits are hardly sufficient to obtain for him the bare necessities of life. Latimer cites his own case as typical of his class, and goes on to speak in still more despondent tones of the yeoman cottager, who had been so hard pushed by the new fashion of enclosing fields as to have looked more to his profits as a day labourer for subsistence, than to the small holding which was henceforth to be the sole equivalent for his former common rights. And yet Fitzherbert was right when he advocated the system, as is evidenced by W. S. Gentleman's treatise,<sup>1</sup> written sixty years after, in 1581, in which he proves that Essex, Kent, Northamptonshire, and other counties are most prosperous by reason of their more numerous enclosures.

The general picture that may be drawn of the Tudor landed classes from all that has been just said cannot be a very happy one. The conflict between the two interests had been embittered by the litigious propensities of the fresh owners. It is true that the rise in wages had considerably ameliorated the condition of the labouring community, but the small farmers and landowners were greatly impoverished. The former, we have shown, resorted to hired labour in order to eke out their precarious existence on the farm, and the latter converted their arable lands into pasture, and went into London chambers in

<sup>1</sup> *A Compendious or Brief Examination of certain ordinary complaints of divers of our Countrymen in these our days.* By W. S. Gentleman. 1581.

order to save themselves the expenses of housekeeping. Many farms were left on hand, and few had sufficient capital to stock them. In addition to the legislation already instanced, there were other Acts designed to distribute the land more uniformly throughout the agricultural community. In 1588 penalties were imposed<sup>1</sup> upon those who built cottages without at least four acres of land attached. In 1597 all houses of husbandry decayed within the preceding seven years were ordered<sup>2</sup> to be rebuilt, and from twenty to forty acres of land attached to them. The difficulty seems to have been in enforcing this species of legislation, as such statutes had to be constantly re-enacted, and even then the rural poverty could only be checked by the Elizabethan Poor Laws. Then, as always, necessity proved a good mother, so that the skill and care set in motion by the lacerating spur of want ameliorated the national system of agriculture. Good and properly cultivated land yielded twenty bushels of wheat, thirty-two of barley, or forty of oats and pulse per acre. Cattle increased to such proportions as to obviate the old necessity of restricting by statute the slaughter of weanlings.<sup>3</sup> Bacon, veal, and even fresh fish (wherever good roads gave access to the seaboard) began to supplement the salt meats of the winter larder, and the Tudor farmer probably was able to sit down to as good a Christmas dinner as any farmer of to-day.

But not content with improving his land and livestock, the farmer in many cases turned clothier, and though his class has always been looked upon as the very marrow of the nation, he incurred by so doing the statute book's contemptuous synonym of "foreigner."<sup>4</sup> When his wife was not spinning flax she was sorting wool for her husband, and the two together with their children probably dressed themselves almost entirely with their own handiwork. The roads were

<sup>1</sup> 31 Eliz. c. 7.

<sup>2</sup> 39 Eliz. cc. 1 and 2.

<sup>3</sup> Harrison, *Description of England*. This man, born in London, became Canon of Windsor in 1586. He had access to Leland's valuable manuscripts, out of which he gathered sufficient materials for the above work.

<sup>4</sup> 5 and 6 Ed. VI. c. 8.

still too bad and the market tolls too exorbitant to induce the husbandman to look much outside his own resources for his wants, and of course the simple farming implements of the period were repaired or replaced by himself and his people. The growing political power of the townsman is now evidenced by the restrictive measures<sup>1</sup> passed through parliament against these irregular rustic industries. The manufacturer of cloth complained that his monopoly was injured, and in future the clothing trade was confined to the towns, though looms were still allowed in the farmhouses of the North and West, where the coarser kinds of hair wool continued to be made up into homespun garments for the country folk.

Up to the reign of Henry VIII. the linen used in England was principally foreign, but about 1533 the State encourages native talent by enacting that every person who occupied sixty acres of arable land should grow a quarter of an acre of flax or hemp annually.<sup>2</sup>

<sup>1</sup> 2 & 3 Ph. & Mary c. 11 ; 4 & 5 Ph. & Mary, c. 5.

<sup>2</sup> 24 Hen. VIII. c. 4.

## The Tudor Period.

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### CHAPTER XXIV.

#### A SIXTEENTH-CENTURY FARM.

THE site for the farm under discussion is best fixed in Norfolk, so that we may be able later on to compare its system of husbandry before the introduction of the turnip, with that a century later, when the famous four-course rotation of crops was in full swing. In parts of England, especially in Lancashire, the farming of the latter end of this century would have been scarcely distinguishable from that practised in the same locality now. After the introduction of clover from the Netherlands and the potato from Ireland, both of which events occurred prior to or early in the seventeenth century, there could have been no radical change in the system, unless we except the gradual absorption of the common tillage field into fenced and private enclosures. Let the reader go up into south Lancashire, and in fancy blot out of his purview the great commercial towns, coal mines, cotton factories and railways of the Wigan district. He will then have rolled back the centuries to the period when good Queen Bess was becoming wrinkled and haggard. No agricultural prosperity seems to have induced the Lancastrian gentry of these districts to add field to field, and pull down their barns in order to build greater. The sixteenth-century date stones on many of the great buildings which held the Elizabethan tenant's hay afford indisputable proofs of our assertion.<sup>1</sup> The houses with their stone roofs, stone walls and stone mullions, are hardly even

<sup>1</sup> I have seen dozens such in my business visits to the farms about Wigan. Turnips and carrots have been grown in one or two fields of late years, but otherwise the farming is wholly as I have described.

now the worse for the wear and tear of intervening centuries. Probably the old smoke tattered fence-rows in most cases enclose the self-same fields into which the Tudor agriculturalists converted parts of the common land, and, too, bear crops identically similar to those which were cultivated by the Tudor yeoman. The pasture land was ploughed up as soon as clover seed arrived in this country, and it has never been restored since. Oats, grass seeds, potatoes, and occasionally wheat have rung the changes of cropping year after year throughout the stormy days of Stuart rule, and the calmer times of the House of Brunswick. The devastation of disastrous civil war at home and the glories of successful victories abroad; the bounties on the exportation of corn, the heavy fiscal charges on its importation, and the ultimate repeal of all its laws; the agricultural honours paid to the turnip, the successes of the Midland graziers, the discoveries of chemical science, and the growth of great centres of commerce in the very district itself, all alike failed to turn the southern Lancastrian from his time-honoured groove of husbandry. He clings to his potatoes and oats as sole sources of profit, whether their prices range high or low in the local markets. He uses no other manures than good farmyard dung, Clitheroe lime, and town nightsoil; he grumbles when Irish potato merchants or American cornchandlers undersell him, but he sticks to the old system through thick and thin, trusts only to his own and his family's industry for working his small tenancy, pays his rent with the regularity of clockwork, and lives and dies in the same building which centuries back sufficed for his Tudor ancestors.<sup>1</sup>

Far different is the case in the county chosen for the farm we are about to describe. Notwithstanding the resistance to the enclosure system as evidenced by Ket's rebellion, the East Anglian husbandman has long established his claim to be considered the pioneer of English agriculture. Badly circumstanced as he is with regard to the congested centres of commerce, and light as much of his soil undoubtedly is, he has

<sup>1</sup> The reader should study the rough ground plan and description of a farmhouse given in G. Markham's *The English Husbandman*, 1613.

always produced mutton and malt whose excellence is as widely celebrated as that of the best Kentish hops, or the choicest Bordeaux vintages.

We must again remind the reader before commencing a description of Tudor farm life, that the Julian calendar was in force during these times; and that therefore the dates in the following account were really twelve days later than they appear. The feast of the Annunciation, in other words April 6th, commenced the year in the Julian calendar, a fact which accounts for that date being still fixed on farms in certain of the Midland counties for a fresh tenant's entry. It explains also the dates of May 12th and November 12th, on which Lancashire farmers are required to pay their rents, and for that of August 12th on which sportsmen commence grouse shooting. There are also several other instances where the Gregorian calendar has not affected the fixtures made under the old system. Though Scotchmen adopted the latter method as early as 1600, Englishmen resisted its innovation a century or more longer. Religious prejudices were at the bottom of the latter's opposition. The Protestants of the Reformation times were too incensed against Romanism to accept even a benefit, however secular, from such a source. Thus an attempt in 1585 to introduce the Gregorian calendar, though twice consented to by the House of Lords, failed to become law. Even when re-introduced and sanctioned by both Houses in the middle of the eighteenth century, the cry, "Give us back our eleven days," continued to be election catchwords with the uneducated some years after the better classes had made up their minds that the Gregorian was preferable to the Julian system.

In Tudor, as in Victorian days, the usual time of entry was Michaelmas Eve; but since a portion of the farm was in the fallowed division of the infield it was of course important for the incomer to get on these lands earlier in the summer so as to keep them clean from weeds. Hence Tusser's remark,—

" New farmer may enter (as champions say),  
On al that is fallow at Lent lady day;

In Woodland olde farmer to that will not yield,  
For losing of pasture, and feed of his field."

The tenant right was settled either according to the terms of the outgoer's lease, or by custom of country, and was placed in the hands of the professional appraisers, who were called champions, and were much the same as the modern burlyman or arbitrator.<sup>1</sup>

The principal inducements to selecting some particular farm were its state of fertility, its dryness, condition of buildings, accessibility to markets, and excellency of farm servants.

The buildings consisted of the farmhouse, the barn, the stable, winter cowhouse, hogscote, boar sty, and hen roost, but the last four were probably wooden erections belonging to the tenant.

The implements required were as follows:—

*Barn.*

Locke.	Wing.
Gofe ladder.	Cartnaue.
Short pitchfork.	Bushel.
Long ditto.	Peck.
Staile.	Strike.
Straw forke.	Casting Shouel.
Rake.	Broom.
Fan.	Sack and Band.

*Stable.*

Locke.	Shouel.
Plank floor.	Spade.
Rack and manger.	Currie comb.
Pitchforke.	Maine comb.
Doongforke.	Whip.
Seeve.	Buttrice.
Skep.	Pincers.
Bin.	Hammer and naile.
Broome.	Apron.
Paile.	Sizers.
Handbarrow.	Bridle.
Wheelebarrow.	Saddle.

<sup>1</sup> I fancy that the champions were permanent and necessary officials all the year through, so long as the system of a common arable field was in vogue, for disputes must have been incessant.

Whit lethor.	Ped.
Nal.	Line.
Collar and harneis.	Halters.
Panel.	Crotchets.
Wanty.	Pins.
Packsaddle.	Door chains.

*General Implements.*

Exeltreed cart.	Sling for woman, } to scare
Cart ladder and wimble.	Bow for boy, } rooks.
Perser.	Carter's whip.
Pod.	Brush sith, } with rifle (i.e.
Wheel ladder for harvest.	Grass sith, } handle).
Pitchforke.	Barley cradle.
Whiplash.	Rubstone.
Cartrope.	Sharp sickle.
Sacks holding a coome.	Weeding hooke.
Pulling hooke.	Beam, scales and weights.
Light tumbrel.	Moulspear with barbs
Doong crone.	Cutting spade.
Shouel.	Skuppat.
Pikax.	Skauel.
Mattocke.	Sickle.
Bottle.	Didall.
Bag.	Crome.
Short saw.	Clawe stock.
Long do.	Rabbit stocke.
Axe.	Carpenter's craue.
Ads.	Seasoned timber.
Douer court beetle.	Saw jacke.
Wedges.	Soles.
Lever.	Fetters.
Grindstone.	Shackles.
Whetstone.	Horslock.
Hatchet.	Pad.
Bill.	Hammer.
Long ladder.	Sorted nailes.
Ox yokes and bowes.	Frower of iron.
Plough beetle.	Sawpit rol.
Plough staffe.	Two ploughs.
Plough shed.	Plow cheine.
Sedge collars for plough horses.	Two culters.
Seede peck.	Three shares.
Barley rake, toothed with irons steel.	Ground clouts.
Pair of harrows.	Side clouts.
Roller.	Ox bowes.
	Hay fork.

Hay rake.	Hammer.
Pease meake.	Trowel.
Short barley rakes.	Hod.
Great do.	Hog yoke.
Pike.	Twitcher and rings.
Skuttle or skreine.	Sheep marke.
Sharing sheeres.	Tar kettle and pot.
Fork.	Two pottles of tar.
Hooke.	1 do. of pitch.
Lath.	

As we proceed to describe in detail the work on the farm, most of the above terms will receive explanation.<sup>1</sup> Starting then at Michaelmas, the beginning of the farming year, we shall relate the Tudor husbandman's preparations for winter.<sup>2</sup> His first act is to thrash out and prepare some of the new crop for seed corn. The farmer therefore proceeds to the barn, unlocks its doors, and admits the thresher to the Rye Gofe or Mow of stacked corn. The thresher ascends by means of the gofe ladder, and pitches the corn down with the short pitchfork, using the long one when the straw mow gets high. The flail separates the grain from the stalk, and the fork is used to remove the straw from the thrashed corn. The fan and wing are used for the winnowing, and the thrasher stands on the nave during the process. The casting shovel is freely used to spread the floor of the barn with an equable layer of the grain. The furthest thrown is generally the heaviest and best, and is therefore set apart for sowing. Preference is given to the rye grown during the recent summer, as the newer the seed the greater its vitality. Owing to its not having thoroughly sweated in the gofe, the best corn comes out under the flail, and the thin inferior grains remain in the ear. The rye is sown in time for it to be "out of the milk," and have a full threaded root before the winter's frost. It was sometimes mixed with white wheat and cropped together; but though the mingled flour made a palatable bread called "Tems loaf," it was thought bad husbandry to grow the two crops on the same

<sup>1</sup> *Vide Glossary.*

<sup>2</sup> The whole of the description of Tudor farming is from the annotated 1774 edition of Tusser's *Hundred Points of Husbandry*.

land, "Lest," as Tusser puts it, "rie tarry wheat till it shed as it stand."<sup>1</sup> If the soil was heavy the swing plough would have been used, and if stony, the wheel plough. In either case the Dover court beetle<sup>2</sup> would be attached for breaking up the clods after the plough. The yoke of two or four oxen would probably draw the plough, or the horses might be taken out of their plank floored stables and harnessed, with the light cool sedge collars for the work. The superiority of either beast was still a contested point. Though it was the practice in some parts of the country to sow the rye and wheat upon the pea stubbles,<sup>3</sup> it was deemed better husbandry to cultivate such crops on the fallow land. As soon as the limitation fixed by the custom of the manor court to the pasturage of the lord's crops on the champion land allowed, the husbandry of the winter crops commenced. The wheat was sown under the furrow, often by a mere child, who carried a bag or hopper full of corn in front of the horses or oxen. The rye was sown above the furrow and harrowed. Two London bushels of wheat were sown to the acre, and about the same quantity was necessary in the case of rye. "Flaxen wheate, polerd wheate or whyte wheate, were the best varieties to blend with rye." Other varieties used were red, English, and peck wheat.<sup>4</sup> The next process was to frighten the birds off, for which purpose a boy armed with a bow or a girl with a sling were set on to cry out and otherwise get rid of these marauders. On damp ground the farmer next proceeded to cut a water furrow across the ridges on the lowest part of the land, or, if its situation in the common field prevented this, his only remedy was to dyke up a fence of soil

<sup>1</sup> Compare Tusser's with Fitzherbert's ideas, which are at variance on this head. My own experience is, that rye will wait any reasonable time before it sheds.

<sup>2</sup> It was called "Dover court" beetle, either because of the Rood of Dover, which was very large and remarkable in Tusser's age, or because of the Dover Court signifying all speakers and no hearers, in allusion to the noise a great beetle is supposed to make. See Tusser's 1774 edition, (September) *Five Hundred Points of Husbandry*.

<sup>3</sup> See Fitzherbert, *Husbandry*.

<sup>4</sup> Fitzherbert, *Husbandry*.

against the highways to keep out the water from above.<sup>1</sup> Leaving his young crop, the farmer could now turn his attention to gathering in on a fine day his orchard fruits. Tusser recommends him to choose a time when the moon is on the wane, possibly because dark nights might save his fruit store collected under the trees from the sharp eyes of the Micher.<sup>2</sup> Having styed up his boar, who by now found little feed in the field, the farmer next proceeded to harvest his hemp, "retting" it in small pools on commons, or near roads, and taking it out as soon as it began to swim. If it was left too long it would rot, and with the fear of this before their eyes, many farmers were wont to dew-ret instead of water-ret it.<sup>3</sup> This was the "shake time" after harvest, when the cattle were turned on to the common field, and the farmer made the most of his spare moments in collecting brakes and fern to store for firing or erect into winter shelters for his livestock. Mast was also harvested, partly for sowing in open spaces among the trees, partly for throwing on the grass about the homestead where the swine could find it. The garden was about this time occupying the attention of the farmer's womenkind. They would be replenishing the strawberry bed with wild roots transplanted from the wood. These, together with the rosemary and gillyflowers, had to be protected with straw in frosty weather. Fruit bushes, such as the barberry, respis and gooseberry, were also attended to. The herb bed, containing wormwood, rue and other plants, was weeded, and a fresh supply of sawdust, brickdust and ashes strewn over the paths.

In October the next year's barley ground would receive its first ploughing, and the winter species of peas, such as the Hasting or Reading, be got into the ground. Any land to be set apart for trees would now be fenced off from rabbits and cattle, and sown with acorns or other seed. Haws would be

<sup>1</sup> He would perhaps be unable to sow his headland with wheat until after his neighbour's horses had ploughed the adjacent plot. Headlands must have been common turning ground in the infield.

<sup>2</sup> "Thief."

<sup>3</sup> "Dew-retting" was the spreading of the hemp on a water meadow, "water-retting" was done in pools.

set in rows for future transplanting as quickset hedges. Sloes and brambles were also cultivated, the former for verjuice, the latter to be boiled with powdered chalk, as medicines for the cows.

The following month was the time for slaughtering the fat cattle, which the superabundance of offcorn, beans and pease, consequent on the recent harvest, had rendered prime for the butcher. The mixture of oats and barley termed "dredge," was thrashed out and malted, their straw used for winter cattle feeding, and the overplus thrown on the yard to be trampled into manure. Meat and fish were next smoked, dried, and stored for winter consumption. Beans and garlic were sown in the fields, gardens trenched, and the house chimneys cleaned.

The month of December having ushered in the winter, the field husbandry ceased, and all hands were employed on hedging and ditching, or the repairs and renovation of implements. The Tudor farmer seldom troubled the tradesman. He was his own blacksmith, and possessed a buttrice for paring hoofs, and all the paraphernalia of the smithy. So also in the saddlery department, where the "whit lether," "nal" or "awl,"<sup>1</sup> etc., were familiar to every husbandman. Carpentry, joinery, and wheelwright's work occupied others of the farmer's household. It was a capital opportunity for repairing all kinds of farm implements, carts especially. Roads in winter were too "noyous" for wheel traffic, and the maid took the butter to market, or the boy the corn to the mill, on horseback, fitted with a short saddle raised before and behind, called a pannal, and strapped to the horse by means of a leathern girdle, technically termed a "wandy." The ped, which was longer, served for heavier loads, and the pack saddle, used up to late years in the North, was principally in request for the conveyance of wool. Meanwhile the men were renovating the cart's body, repairing the cart and wheel ladders used during hay harvest, reclouting the axle-trees with iron plates, and reshodding the felloes with iron stakes or

<sup>1</sup> See Glossary.

tires. The horses who were wont to draw these carts, both leaders and thrillers,<sup>1</sup> must have had a lazy existence all this time, and seldom left their warm stables. All the feeble or old cattle, and especially the milch cows, were now housed. They were fed chiefly on hay and straw; the rye straw, as being the poorest, was used first. The horses were fed principally on hay and chaff, and sparingly on peas haulm and dried vetches.

Save for the occasional visit of the chapman, who seems to have both bought farm produce and sold trifling necessaries, the farmer and his belongings were almost completely isolated from the outside world during the depths of this season. Not long after Christmas he was in a state of siege, and had to put all living on short rations, to stave off the attacks of famine and disease. If times were bad he would seldom allow the luxury of a roast joint, but lived principally on broth.<sup>2</sup> He took care that there was no waste of fuel at the servants' fire; and began to replenish his supplies by the fallage of timber. In snowy weather the smaller branches were thrown to the cattle in the open, for both they and the rabbits were supposed to do well on this species of food, which received the name of "Browse." By the end of the month the fodder supply would be often alarmingly short, and farmers would search the hedge greens<sup>3</sup> and open spaces of the woodlands for prime grass. To correct the humours occasioned whenever his cows overfed themselves on this unusual dainty, the farmer would resort to his store of verjuice, and dose the suffering animals with this medicine. A little later there would be some early calves and lambs, which it was good policy to butcher as early as possible, since by so doing their fresh meat as well as their mother's milk might stave off the symptoms of scurvy and other scorbutic eruptions, which generally put

<sup>1</sup> The wheeler was called *thiller*.

<sup>2</sup> It is probable that in some districts the labourer was entitled to a certain quantity of roast meat per week. See remarks at the end of this chapter.

<sup>3</sup> In every arable close there would be a headland a rod wide, left for pasture.

in an appearance at this late stage of the winter. Invigorated by the better food, all hands would seize the earliest opportunity afforded by open weather to get on to the land once more. The barley soil would get its second ploughing, the oats would be sown, and the manure carted on to the spring bean land.

In these days, when enclosures were few, the dilatory farmer was spurred on by his more industrious neighbours, who fore-saw that even a single late sown crop would delay not only the universal harvest, but the entry of their cattle and swine on the infield at Lammas day. About this time of the year Tudor farmers in the Eastern Counties might have been seen at work in many such a field ploughing a large ridge, in width as much as a rod, around that portion of land intended as an enclosure. This they would sow with hips and haws, hazel nuts, and the fruit of the bramble, harrowing and weeding the ground for a couple of years after, and ditching it a still longer period, until there sprang up those belts of coppice which have received the later appellation of shaws or springs, and which were admirably adapted both for shelter and fence.

Having sown his oats and beans, dunged his meadow ground, and (if he possessed any) attended to the setting of his young vines or hop roots, it was time for the farmer to look over his granaries, and thrash out sufficient grain to convert into the Lady-day rent. On the 12th of March, termed by Tusser "Gregory," the cattle were removed from the meadow ground, and a little later, at Easter day, or as Tusser terms it, "Paske," the marsh meadow ground was similarly cleared. This month of March was an arduous time for the farmer; and as in Lent it was the rule rather than the exception for Tudor farmers to abstain from flesh meat, they had to work on such orthodox but meagre diet as salt fish, furmity, gruel, wigs, milk, parsnips, hasty pudding, pancakes, and occasionally eggs. It must have been a worse time still for the farmer's dog, whose longing for meat sometimes induced him to raid on the flock.

"Watch therefore in Lent," says Tusser; "to thy sheep go and looke, for dogs will have vittels, by hooke and by crooke."

During April the barley was sown, the wheat rolled, the

garden set, the headlands mown, and the oak bark harvested. The following month was a busy time in the dairy; all the lambs were weaned, the ewes milked from then up to August, and cheese-making was in full swing. The roofs of the buildings were re-thatched with reeds, the corn weeded, buck and brank sown for hay or poultry and hog feed, and flax and hemp for the housewife's distaff or rope-maker's yarn. Hemp was of two sorts: the Fimble or female hemp, which ripened soonest, was not worth half as much as the Carle with its seed.

After twifallow, or second ploughing of the fallow ground, there was little else for the men to do save cart home the rest of the winter-fallen timber and watch the various crops grow. The farmer's wife would divide her attentions between superintendence of the dairy and distillation of the various aromatic garden herbs into pleasant waters, the manufacture of which was a feature of the age. In June the hands were taken from the summer fallowing and set on to harvest the hay. Right on till autumn it was in fact one long harvest, now of hay, next of brambles and brakes, then of pulse, corn, buck and ranke, lastly of flax and hemp. Wet times and early morning were taken advantage of to complete the third ploughing (or thryfallow) of the summer fallow ground. Hay was cocked in unsettled weather, and on some farms each evening. Corn, especially bread corn, peas and tare stacks were raised out of the hog's reach on "hovels," i.e. places enclosed with crotchetts and covered with poles and straw. They were wattled with whins and furze, so that turf, sea cole, tall wood, bavin and billet could be secured underneath the stack. Flax was harvested sometimes as early as July. The crop was divided into two lots, that for the linen being gathered before it ran to seed. Buck and ranke were made into hay, and had to be garnered in an absolutely dry condition. A piece of ground in almost every farm was planted with saffron roots, as it afforded the best sward upon which to bleach linen. The corn harvest was sometimes let, either by the day or by "great,"<sup>1</sup> but the best plan was to hire men at their meat,

<sup>1</sup> The old term for piece-work.

drink, and wages, and to set apart a cow or two and some fatted crone ewes for their food. The men worked under a sober steady foreman, called a "lord," who led the swarth both in reaping and mowing. Every man was furnished with gloves, and had the privilege at the end of the harvest to go round the neighbourhood crying largesse, which custom still clings to the Eastern counties. Before the corn was garnered the hogs were already in the infield, and the word "hoy" was used to frighten the animals from under the carts before moving forward each time along the mows. When reaped with the sickle, the stubble remained long enough to allow of a second mowing, a process which was deprecated amongst good farmers as impoverishing the soil. Barley was generally mown, then either raked and set up in cocks or tied into shocks. The latter custom prevailed when, as in Devonshire, it was carried out of the field on horseback, or in Northumberland, where it was conveyed to the barn in sledges. The parson of course took his tithe either in the swarth or shock, as the case might be, prior to the removal of the crop. Peas, according to Tusser, were not turned before carried; but the side that has lain long next the ground is sure to be too moist, and such a practice cannot pass unchallenged. The stubbles now bared of the crop were left to the gleaners, the community's horses and swine. By Michaelmas the superfluous grain, having had time to sprout up into green shoots, afforded an excellent food for the cows.

The harvest all gathered in, it was high time for a short rest and jollification. A good supper was provided for all hands; ribbons, laces and pins distributed amongst the young folk; the best beer (of which there were three sorts brewed for harvesters) served out to the men. So much has been said about the work of the farm that one may well begin to wonder whether any time was left for holiday making. Yet there were several widely recognised periods for festivity and fun. From Christmas day to Twelfth night the gentry feasted the farmers and the farmers their labourers. Plough Monday was the occasion for reminding all agriculturalists of the stern work before them. On that day men and maids endeavoured to

prove their diligence in rising earliest. The ploughman strove to collect his whip, staff and hatchet, and be by the fireside before the maid could get her kettle there, and the Shrovetide cock was the prize of the winner. A good supper and strong drink in the evening of this day terminated the feasting.

At Shrovetide the fun was renewed, when the lads, blindfolded by their sweethearts' aprons, chased one of their fellows at whose back dangled a plump hen. Bedecked with horse bells, the latter led his comrades a merry dance, and some time elapsed before the hen was captured, relegated to the spit, and served up with bacon and pancakes for supper. The Wakeday was another occasion for jollification, on which was celebrated the dedication of the parish church. A morning service and afternoon's frolic commemorated the event. As after harvest, so after seed-sowing there was joviality, though in a less degree. The seed-cake, pasties and furmenty pot afforded a pleasant and additional relish to the ordinary fare of supper. Except after bad harvests, the farming community were not stinted in their diet, and on some farms even the labourers expected and received roast joints on Thursday evenings and Sunday mornings throughout the year. Many of this class were privileged to keep a pig, all were entitled to board and lodgings as well as wages, and such a system should have spurred all hands to perform the tasks of husbandry effectually and without waste of time. It was in fact an arrangement in which the co-operative system is clearly recognisable. A harvest strike, not unheard of in nineteenth-century agriculture, would have meant loss and deterioration not only of the master's winter food supply, but also of the strikers. A robbed hen-roost, lost, stolen or strayed cattle, neglectful herding, all signified so much less meat for the farm garrison during the approaching winter; and as for an inclement season, it was a disaster in which everything that drew breath participated. Under such circumstances one might almost imagine that nobody would require much supervision. It was however, though an accident, still a feature of the farmer's position, that he should be the centre of a critical

circle. His neighbours in the common field watched him, for they were each personally interested that he should not get behindhand with his husbandry. His landlord's steward watched him in order to detect any attempts to impoverish the land, and his men not only watched him, but grumbled if they thought he was negligent or wasteful of his opportunities. No doubt also supervision was just as necessary to the farmer, and labourers were just as liable to be idle or dishonest then as now. The ideal of good farming, according to Barnaby Googe, was wherever the ground was frequently manured with the master's foot and the larder provendered with his eye. Nor will the reader cavil at this old writer's sentiment, since supervision not only deters or detects the bad workman, but animates the good by its appreciation and approval.

## The Stuart Period.

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### CHAPTER XXV.

#### ATTITUDE OF THE LANDED INTEREST IN THE ENSUING CONSTITUTIONAL STRUGGLE.

ACCORDING to the great poet of the period, it may be said that the divinity which is supposed to hedge the sacred person of the sovereign was conspicuous throughout the late dynasty. A majesty inherent to the Tudor race had kept at arm's length that fierce resistance which a long increasing and now formidable power had enabled the commons to oppose against every constitutional abuse.

The vox populi, which neither the rapacity of Henry VII. nor the despotism of his successor, which not even the bigotry of Mary, much less the parsimony of her sister, had fully aroused, now thundered forth into a rebellious shout at the pusillanimity of James and the insincerity of his son.

Macaulay<sup>1</sup> has opined that the weakness and meanness of the former was the saving of the nation, but such a thesis is open to grave objection. It is true that the struggle betwixt king and parliament had reached a crisis, and that the inferiority of the former ensured the triumph of the latter. A limited monarchy replaced for ever that royal absolutism which had long threatened the English people. But at what a cost! Both sides threw away moderation. Extremes met. The people murdered one representative of royal despotism, and almost hunted to death another, only to find themselves under a worse despotism still. Then to evade the military yoke created by their own efforts, they thrust their necks under

<sup>1</sup> Macaulay, *History of England*, ch. i.

the feet of the worst king who ever ascended the English throne. But surely had James I. been as generous and strong as he was the reverse, all these extreme measures might have been avoided ! Hallam<sup>1</sup> has pointed out that no private individual could have claimed a single acre of English soil without a better title than James advanced for the English Crown. But notwithstanding this, if the religious differences could have been bridged over, and the unjust impositions put a stop to, the nation would have ignored the illegality of the new king's accession far more thoroughly even than it subsequently ignored that of the Brunswick family. To successfully surmount these difficulties required a stability of character to which the reigning House was an utter stranger. It was, then, Stuart idiosyncracy combined with the immoderation of a democracy as yet uneducated in the exercise of power which brought about that series of catastrophes to which we have briefly alluded.

The ecclesiastical interest rallied round the king from the very first, and it might have been supposed that the landed interest, following out the same traditional policy, would have likewise clung to the throne. When, indeed, that throne was tottering, it too rallied to the king and spent its best blood and treasure to prop up his toppling seat, but during the reign of James there were too many grievances to bring about any lasting reconciliation. The large accession of fresh blood to the land, and the dislike of the new proprietors to the system of feudalism, has been already pointed out. The incidents of military tenure having lost all significance remained merely irksome and farcical burdens on the land. The sovereign's exercise of his rights under the incident of wardship whenever he wished to confer on a favourite the estates and hand of some heiress, was regarded by all the great families as a badge of slavery. The custody by the king, without accounting for the profits, of every military tenant's estates until he should reach the age of twenty-one, was especially obnoxious to the new blood. Vehicles were impressed for the king's service, victuals exacted for the king's table, and even trees felled for the

<sup>1</sup> Hallam, *Constit. Hist. of England*, ch. vi.

king's firing, by insolent officials under the pretences of purveyance.<sup>1</sup> Against these customs, in spite of the glamour of hereditary right, the prosaic blood of the Stuart country gentry rose in revolt and found powerful expression in the Parliament of 1604. It was not a time of agricultural depression—quite the reverse. Corn had risen 10s. per quarter, wools had jumped from 20s. to 30s. per tod, rents had gone up in proportion to these prices,<sup>2</sup> and the landowners were evincing their increased opulence in the creation of those Jacobean country seats which are still the admiration of all beholders. Nor was it the first time that royal attention had been thus called to these impositions, and it might have been thought that a period of prosperity such as this would not have been the selected occasion for renewing the agitation. The meanness of the king afforded an opportunity and proved his ruin. A flat refusal would have been respected; a gracious concession would have ensured the lasting adherence of the landed interest. He did neither, but stooped to unworthy attempts at bartering away these traditional perquisites of the Crown for a lump sum of money. His terms were too hard for acceptance; valuable time was wasted; session after session slipped by in resultless contention. The commons gradually felt their way to power, while the king as gradually decreased in dignity and advanced in unpopularity. To their original demands the landed interest added that of the abolition of aids; the commercial interest that of prises; the two combined, that of benevolences and tonnage and poundage. This action associated the two great classes of the nation in a united agitation against the king. The whole feudal system, including reliefs, primer seisin and wardship, as well as purveyance, was now menaced by the commons, and the king's sole resource was to dissolve parliament. Cut off thus from his supplies, he raised a small income by the sale of peerage patents and the newly created baronetcies, and when such means failed, faced the two estates of the realm afresh. Thus twenty years went by, prolific in nothing substantially beneficial to either party, but fraught with danger in the near

<sup>1</sup> Hallam, *Constit. Hist. of England*, ch. vi.

<sup>2</sup> Id. *Ibid. vide Note on Lord Cranfield.*

future. When James lay down to die, he had left as a legacy to his son a House of Commons whose members had become veterans in the arts of political warfare. Accustomed to kingly evasion, hardened to resistance, inured to disappointment, they knew not only their own powers, but how best to use them.

It is doubtful if the ablest of kings could have then satisfied a nation in such a mood without his becoming a mere puppet. And yet it were unjust to attribute wholly to James's contemptible meanness of character all the dire consequences of the succeeding reign. Causes had been accumulating throughout the century of Tudor sovereignty. The Statute of Fines had, it has been already shown, afforded additional facilities for the subdivision of landed estates, and vast quantities of these had been thrown on the market at the time of the Reformation. Both incidents combined to create a numerous class of small landed proprietors; many of whom boasted a blood relationship with the ancient nobility, while others were sprung from the citizen class. The new order thus combined in its ranks both the haughty pride of the old Norman aristocracy and the cool calculation and shrewd foresight of the merchant. By the infusion of this element into the Lower House of Parliament there arose that formidable estate of the realm, which proudly termed itself the "Commons of England." Without the most intimate knowledge of kingcraft no sovereign could have withstood the determined opposition of such people, who were as irresistible in the political arena as they afterwards proved in the field. But it needed far less than kingcraft, merely indeed a particle of common sense, to see that all those demands, which his father had barely succeeded in shelving, must be now ceded by Charles. Feudal incidents and purveyance were as good as moribund, and further attempts to enforce such impositions were as futile and imprudent as would have been the revival of some long obsolete tax like the ship money. And yet Charles was so misguided as to attempt this very step. The musty records of Norman legislation were hunted up, and long forgotten malpractices, such as this particular tax, the law of knighthood and even the iniquitous forest enactments resuscitated

from their well-merited graves.<sup>1</sup> This insane policy touched the whole landed interest in its sorest point and brought Hampden to the front. As compared with his father's milder opposition, Charles's action was as aggressive as that of Rehoboam. Smarting under this chastisement with scorpions, it is surprising that the entire English gentry did not at once join the revolt, and their forbearance amply proves how closely associated with the landed interest was the sense of loyalty to the Crown. As it was, it was divided into two hostile factions. Speaking generally, the hereditary owners of real property helped to swell the forces of the Cavaliers, whereas the recently imported blood swarmed into the Roundhead camp. Amongst the former there still lingered the force of tradition; and just as in times of danger their fathers had rendered obligatory service to their feudal lord and master, so now their descendants voluntarily arrayed themselves in the ranks of the king's army. Once more then the land was to be deluged with the blood of its occupiers. Small knots of the gentry, well mounted and "accompanied (as Macaulay puts it) by their younger brothers, grooms, gamekeepers," and huntsmen, might be seen dotted over the country, all converging with hot haste on the royal field quarters. Estates were mortgaged and heirlooms sold to replenish the king's military chest. Even the family plate, contemptuously termed by the Roundheads "thimble money," found its way into the melting pot for a similar object. On the other side, Hampden was enlisting a regiment of hirelings whom Cromwell had contemptuously described as "a mere rabble of tapsters and serving men out of place."<sup>2</sup> But the cream of the Parliamentary forces was composed of the farmers' sons and freeholders, and these were the raw material out of which Cromwell fashioned his famous Ironsides.

It is, however, inaccurate to describe either camp as wholly composed of particular classes. There were noblemen in the Parliamentary ranks, and citizens as well as freeholders in the Royal army. Professor Rogers has shown that the opposing

<sup>1</sup> *Parliamentary History*, vol. ii., p. 526.

<sup>2</sup> Macaulay, *Hist. of Engl.*, ch. i.

forces were ranged on either side of an imaginary line<sup>1</sup> drawn between Scarborough and Southampton, and strange to say the same line would have divided the Yorkists from the Lancastrians in the Wars of the Roses. Those who lived east of this line were generally found on the side of the Parliament, those on the west side, with the exception of the town populations of Bristol and Gloucester, on that of the king. It is difficult to find an adequate reason for this phenomenon. East Anglia, or the Associated Counties, as that part of England came to be called, had recently been inundated with a flood of Flemish refugees. Kent and other southern counties had been similarly intruded upon by the persecuted French Huguenots, and it is possible that the religious views of both sects had thrown these portions of England into an antagonistic attitude to the High Church tendencies of the Royal party. Mixed up with religious feeling might also have been the subject of finance. The Flemish weavers had made Norfolk next to Middlesex the wealthiest English county. The poorest counties were the northern and western,<sup>2</sup> and it is a curious circumstance that all the wealthier parts of England should have espoused the Parliamentary side, while all the poorest parts were in league with the king. It was then no class struggle that ensued; sentiment, religious as well as social, was largely mixed up with class grievances. All the copyholders did not join the Parliamentary standard because they had failed to wring from Charles's father their enfranchisement; nor did all the peers espouse the king's cause, because in him they saw the safeguard of their feudal dues. There was just the same curious admixture of classes as there is now in the political parties of Conservative and Liberal, of which Royalist and Roundhead were the progenitors.

There is no necessity to linger over the scenes of Marston, Naseby and Whitehall. There was war over the face of the land, but happily neither murder nor rapine, though every atrocity, even cannibalism, was imputed at the time to the cavalier horse.<sup>3</sup> Hundreds of estates were confiscated, numbers

<sup>1</sup> Rogers, *Prices and Agriculture*, introd. ch., vol. v.

<sup>2</sup> Id., *Ibid.*      <sup>3</sup> *Vide Note C*, to Sir Walter Scott, *Woodstock*.

of landowners ruined, many fertile soils devastated. What else could have been expected while half the landed interest was at the other half's throat? Charles suffered and Cromwell came into power. The two Cromwells died, and the military absolutism continued. Through the conduct of Charles the King, the monarchy had lost all favour with the nation, through that of Charles Stuart it regained its lost ground, and through the memory of Charles the Martyr it had become more popular than ever. It is now time to examine the effects of this national struggle upon the rank and file of the class which drew its profits from the soil.

The last years of the Tudor dynasty had been marked by unfruitful harvests, but the seasons seem to have had very little effect on the prosperity of agriculturalists. Indeed, from 1576 prices began to rise, both the yeomen freeholders and the tenant farmers profiting by the circumstance, and the landowners ultimately sharing in the general prosperity as soon as they had obtained a proportionate rise of rents.<sup>1</sup> The labouring class alone suffered; their wages remained stationary, although the necessaries of life had risen in value. It is an ill wind that blows nobody good, and the Civil War, which caused to stagnate, if it did not throw back, agricultural development, stepped in between this last-named class and destitution. Many confiscated estates fell into the hands of men risen from the plough who, chiefly animated by a love of gain, returned with delight to their old pursuits. Platts, Hartlib, Blyth, and many others encouraged the revival of husbandry by their writings. Cromwell himself was an interested patron of all connected with this profession, and much attention began to be directed to the scientific farming of the Flemings.<sup>2</sup> The object of these intelligent and industrious people was as far as possible to make a farm resemble a garden. They cultivated small estates only, which they frequently hoed, dug and manured. They made the great discovery that ten acres of vegetables maintained a larger stock of grazing animals than forty acres of common field grass, and that the latter pasturage

<sup>1</sup> Rogers, *Prices and Agriculture*, vol. v.

<sup>2</sup> Rees, *Encyclo.*, sub voc. Agriculture.

could support double the usual quantity by the improvement of its herbage. Sainfoin, trefoil, sweet fenugreek, buck and cow wheat, field turnips and spurrey were therefore grown. They let out their farms on improvement, discovered a dozen new fertilisers, and were the first of modern nations to appreciate the beneficial effects of green crops cultivated for ploughing under as manure. They paid special attention to sheep, housing them every night in covered sheds whose floors were strewed with virgin earth or sand. The manure thus made served as an excellent top dressing. Salt, street dirt, sullage of streets, clay, fuller's and moorish earth, dunghills in layers; hair, burnt vegetables, malt dust, willow-tree earth, soap-boiler's ashes, marl and broken pilchards were rescued from the gutter or rubbish heap to fertilise their farms.<sup>1</sup>

It was to such people that our leading agriculturalists now turned for instruction. The new element that had entered into part possession of the English soil was composed of needy, serious, industrious and skilled husbandmen, who looked upon landownership as a profitable profession. Their example leavened the whole lump; and directly men could lay aside bandoleer, tuck and corslet, it became the fashion to stop at home and cultivate their lands. As regards agriculture, it mattered nothing to such men whether they had recently worn the blue sash, white plumed hat, and laced cloak of the Royalist, or the red surtout and steeple hat of the Parliamentarian Malignants and Fifth Monarchy Men; Sectaries and Churchmen, all looked to Cromwell as the patron of their profession, whether they secretly called him "Old Noll" or Lord High Protector. Men of the greatest refinement and learning were using their pens in the agricultural cause. Hartlib was the crony of Milton, Sir Hugh Platte a friend of Cromwell's,<sup>2</sup> and these two writers were feeling after a something that had long been a want in agriculture. One has only to study their writings to discover that unwittingly they were raising a cry for help to chemical science, to which, alas, for

<sup>1</sup> Rees, *Encyclo.*, *sub voc.* Agriculture.

<sup>2</sup> Blith dedicated his work to Cromwell, and Hartlib received a pension from the same patron as a reward for his agricultural research.

fifty years the latter turned a deaf ear.<sup>1</sup> Becher in the century before had initiated a new departure in this science, for he had relinquished the mad search after the philosopher's stone to direct attention to that which about the period of which we are writing became known, under Stahl's instrumentality, as the Phlogiston theory. Though the idea of an inflammable earth was all nonsense, as Lavoisier ultimately proved, it set chemists thinking, and paved the way to the discovery of oxygen by the eighteenth-century chemists. That event proved the key to a treasure store of Nature's secrets, and during the last century of the world's history men have hardly ceased to wonder over one great chemical discovery before another still more brilliant eclipsed in importance its predecessor. But at the time of which we write, though Boyle had long been feeling his way in a right direction, Lavoisier, Priestly, Davy, Dalton, Gay Lussac, Berzelius, Dumas, and all the other great pioneers of chemical science were as yet unborn. We, who are in possession of Liebig's, Gilbert's, and Lawe's discoveries, can only marvel at the close and assiduous industry of those seventeenth-century Flemish husbandmen, which alone could have produced that empirical knowledge of plant-life whose accuracy modern science has failed to impugn. Even Irish soil showed unmistakable proofs of Cromwell's beneficial rule, and new buildings, roads and plantations opened up the country and converted sterile lands into a state of cultivation as advanced as that of Kent or Norfolk.<sup>2</sup> In Scotland, however, the agriculture of this period was wretched. Even of the rich soils of the South-Eastern counties an eye-witness in 1660 has handed down an unflattering account.<sup>3</sup> The Scotch ploughmen were too lazy to take off their cloaks

<sup>1</sup> Worledge, in his *Systema Agriculturae*, makes much of the then current belief, that there was a universal mercury, sulphur and salt, to the proper combination of which a soil owed its fertility. Rogers points out that his physical science and chemistry had progressed very little beyond the stage of occult causation, which Bacon denounced, and very little into that of observation and analysis, which Bacon commended. *Prices and Agriculture*, Introd. vol. v.

<sup>2</sup> Macaulay, *Hist. of Eng.*, ch. i.

<sup>3</sup> *Select Remains of John Ray*, London, 1760.

whilst working; the Scotch farmers too improvident to resort to bare fallowing. Sea-wrack was the only manure used on the ley ground. Wheat and rye were never cultivated, though the soil, naturally prolific, threw up heavy crops of barley and oats. Nothing very satisfactory could result from such disgraceful husbandry. The bread, cheese, butter and drink were all indifferently bad. The principal diet of the native was a broth of either colewort or barley; his dwelling a one-storied hovel, with neither chimney nor window, and his person as uncultivated as his soil. Abroad, farming had received a fresh impetus, about 1478, by the writings of the Italian Crescenzi, and at the beginning of the century now under discussion, the French, in the persons of Bernard Palissy and Charles Estienne, had begun to bestir themselves in a similar fashion.<sup>1</sup> Other continental writers of this period were Herrara of Spain, Heresbach of the Low Countries, and Tarello of Italy. Though men's minds were thus set towards improving European agriculture, there was no spur of stern necessity to urge them forward. This was not to occur till after the long war which ended in the Peace of Aix la Chapelle. The scarcity engendered by this long period of warfare so frightened the French, that good farming became a State policy, and was therefore encouraged by the king and attempted by the nobility.

<sup>1</sup> Rees, *Encyclo.*, *sub voc.* Agriculture.

## The Stuart Period.

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### CHAPTER XXVI.

#### ITS AGRICULTURE.

THE seventeenth-century agricultural writers draw particular attention to the rapacity of English landlords, who by levying heavy exactions at the determination of a lease, discouraged their tenants' attempts at permanent improvements. The system of competitive rents occasioned by the former's practice of proclaiming vacant holdings in open court, is especially deprecated by Norden.<sup>1</sup> Farmers had begun to look upon the surveyor or agent as little better than a landlord's spy, and thereby had arisen a want of cohesion between landlord and tenant, which did not fail to prejudice agricultural enterprise. Hartlib<sup>2</sup> objected to the utter lack of system which the granting of fines involved, and by which the copyholder became a prey to the rapacity of his landlord, and he further deprecated the practice of keeping large flocks of pigeons by people who held no land, and therefore relied on their neighbours' crops to support the winged inmates of their dovecotes. These facts are the more striking when we come to reflect that the writers were men predisposed by birth and education to impartiality. Norden was probably a surveyor, Markham a gentleman of travelled experience and varied attainments, Hartlib a Dutchman of refined tastes who had visited all Western Europe and parts of America, Vaughan a Herefordshire gentleman, Platten of foreign extraction, Worledge a Hampshire squire, several like Plat, men of title, Blith a parliamentary officer, and Weston an ambassador.

Perhaps two of the most important improvements which

<sup>1</sup> Norden, *The Surveyor's Dialogue*.

<sup>2</sup> Hartlib, *Legacy of Husbandry*.

were due to the influence of the Flemish immigrants, were the reclamation of those fen lands amidst which they had settled, and the cultivation of turnips and annual grass seeds.

On account of their fowl and fish, the marshy wastes of England had heretofore been estimated at a fictitious value by their neighbouring inhabitants. Certainly they afforded support to vast flocks of tame geese, and the book of the Boston Custom House shows that it was not unusual to send off in one year 300 bags of feathers, weighing  $1\frac{1}{2}$  cwt. each bag. Nor are these statistics beyond the bounds of credibility when we reflect that the unfortunate goose underwent several pluckings during the year before its owner considered the harvest of quills and plumage complete. The lower classes of the agricultural community were therefore indisposed to favour any innovations on their fen rights, the more so because the system pursued where marshes had been already reclaimed<sup>1</sup> did not encourage them to try the process. They had seen avaricious cottagers pay an annual trifle for the rights of turning on the reclaimed land a huge flock of geese, which rendered the entire herbage uneatable for the solitary cow or few sheep of a neighbour whose rights had cost him just as much. On the other hand, the landed proprietors, though anxious to reclaim such wastes, were deterred from so doing on account of the intermixture of mortmain estates and the varying rights of bordering parishes. Flemish energy, however, found means to overcome these difficulties, and systematic attempts were made in many localities to drain tracts of marsh country. It is not improbable that the acre tax or acre shot, such as 2s. 6d. for draining Haddenham Level, may have owed its origin to this period of history,<sup>2</sup> and Norden records the successful experiments, about this same age, of Captain Lovell and Mr. Englebert in improving the marshy wastes of no less than three counties.<sup>3</sup> What the Romans had begun, and the monks of Thorney, Crowland, Ramsey, Ely and Spinney carried

<sup>1</sup> Rees, *Encyclo.*, *sub voc.* Fens.

<sup>2</sup> *Ibid.*; vide also Sir Jonas Moore, *History of the Great Level of the Fennes*, 1685.

<sup>3</sup> Norden, *The Surveyor's Dialogue*.

forward, the Earl of Bedford and thirteen gentleman adventurers continued in 1630. The Bedford level was drained in Hartlib's time, and Scotch prisoners taken at the Battle of Dunbar in 1650, as well as Dutch sailors captured by Admiral Blake in 1653, were set on to labour at the work.<sup>1</sup>

Indeed, it needs but a cursory study of agricultural books to see that not only was the irrigation, drainage, and floating of land a constant subject of attention, but advanced minds were looking on all sides to discover how they could transform the inundated flats of Cambridgeshire and the sea-drowned fore-shores of the Eastern Counties into fertile land. Even the frequency of water mills was deprecated, and Blith advocated the substitution of wind engines so that the swamping of otherwise fertile plots through the back poundage of streams might be avoided.<sup>2</sup> His scheme for the reclamation of the fen district has since been adopted. It was a daring idea, comprehending the drainage of a tract of country seventy miles long by thirty broad, comprising 680,000 acres of primeval fen. Nature's drainage, consisting of the rivers Cam, Ouse, Nene, Welland, Glen, and Witham had become choked and foul. Twice daily the tides drove back the fresh water, so that these streams added their quota to the already inundated country.<sup>3</sup> In 1635 at Skirbeck Sluice, near Boston, a smith's forge and tools were found buried under sixteen feet of deposit. Blith's methods included the pumping system by wind engines, which now raises the water from the lower dykes into the banked up arteries of the higher level. Once reclaimed, he determined that the land should be fruitful, and recommended the system of "denshiring." The hassocks of coarse water grasses were to be shaved off, the turf pared and burned, and the plain ploughed, ridged, and cultivated for oats. The great works thus undertaken and vigorously pushed forward were however a failure, and the east fen became once more a shaking bog, while even the west fens in 1793 were so wet that their "gossamers, rowty fogs, mildews and rank grass," to which Harri-

<sup>1</sup> Prothero, *Pioneers of English Farming*.

<sup>2</sup> Blith, *English Improver Improved*, 1652.

<sup>3</sup> Prothero, *Pioneers of Engl. Farming*.

son attributes the malady of rot, destroyed 40,000 sheep in that single year, while in 1750 on Lindsey fen, Prothero thus quotes an historian of the period: "Cows foraged midrib deep in water, swimming to their pasture from their hovels and returning in the same way, and sheep were conveyed to pasture and clipped in flat-bottomed boats."<sup>1</sup>

Blith was the next writer to deal with the encroachments of the sea, and his method of embankment is described together with illustrations of the various tools used for trenching, paring, turving, and ploughing.<sup>2</sup> Thus did these Flemish experts dispute the sovereignty of every such aqueous waste with the fen eagle and the crane. The introduction of sainfoin, clover, and other artificial grasses was not only strongly urged by the famous agriculturalist Hartlib, but Blith was writing out the most careful instructions anent the husbandry of weld, woad, and madder for dyes, hops for drink, saffron as "a very sovereign and wholsom thing," liquorice for fattening cattle and medicinal purposes, rape and coleseed for oil, hemp for linen and cordage, and flax for thread and cloth. All to no purpose; for, as Professor Rogers<sup>3</sup> has pointed out, Arthur Young complained of their absence a century later when he traversed the provinces in search of agricultural information.

The now hackneyed theme of enclosures received reiterated advocacy by the seventeenth-century writers. Successful precedents were by this time available to second their efforts. Blith takes occasion to point out to his readers a case where the pasturage enclosures of one lordship bring in a profit of one thousand pounds as contrasted with the common ground of an adjoining lordship which barely realises one-third of the sum. He would put the shepherd of the common lands to the spade, the herd boys and girls to school, and make short work of the great and oppressive flock or herd masters. He would increase the national livestock by thus minimising the mortality from rot. The cottier should have his allotment, the minister his compensation for loss of tithe, the farmer the enclosed

<sup>1</sup> Prothero, *Pioneers of English Farming*.

<sup>2</sup> Blith, *Engl. Improver Improved*.

<sup>3</sup> Rogers, *Prices and Agriculture*, vol. v., ch. ii.

land at a low rent, and to the educated mind of the landlord the palpable gain needed no demonstration. Before the author exhausts his subject he proves under five heads the advantage to the national agriculture of his enclosure scheme, viz. 1. the increase in fodder to cattle; 2. augmented fertility of soil obtained by resting one enclosure while the turf of another is ploughed up; 3. availability of the enclosed ground for manuring; 4. increase in the yield of cereals; 5. conversion of the obsolete slades, hakeways, balks and highways of the common field into profitable tillage.

If we collect together the topographical information conveyed in the writings of the seventeenth-century agricultural school, we have a fair peep at English agriculture as a whole. Perhaps Somersetshire, a county under a bad name amongst Tudor writers<sup>1</sup> on account of the marauding propensities of its inhabitants, exhibited the greatest fertility, the Taunton district being styled by Norden the "Paradise of England." The best meadow fields were at Crediton and Welshpool, the best hop gardens those of Suffolk, Essex, and Surrey,<sup>2</sup> the best fruit grounds at Feversham and Sittingbourne, and the best apple and cherry orchards in Gloucestershire, Herefordshire and Worcester.<sup>3</sup> The carrot was being grown with success on the light soils of East Anglia,<sup>4</sup> liquorice had been attempted at Pontefract and Godalming,<sup>5</sup> saffron had obtained a trial in a corner of Essex. Dorset, Sussex, Wilts, Hants and Bucks were celebrated for their sheep farms; at Cobham in Kent had been made one of the earliest trials of sainfoin. The best flaxland was about Bow and Stratford in Essex, Maidstone in Kent, and the central counties of England.<sup>6</sup> Sussex farmers were purchasing lime from a distance and burning it in their own kilns; Cornish farmers rode many miles in search of sand. Middlesex

<sup>1</sup> A Somersetshire justice of the peace says that in his county 40 persons had been executed, 35 burnt in the hand, and 183 discharged for robberies and other felonies. Strype, *Annals*, vol. iv., p. 290.

<sup>2</sup> Norden, *Surveyor's Dialogue*.

<sup>3</sup> Worledge, *Systema Agriculturae*.

<sup>4</sup> Norden, *Surveyor's Dialogue*.

<sup>5</sup> Worledge, *Systema Agric.*

<sup>6</sup> Blith, *Improver Improved*.

and Hertfordshire farmers were buying up the London street sweepings, and the market gardeners of Chelsea, Fulham, Battersea and Putney were reaping large profits by using the London night soil as a fertiliser.<sup>1</sup> Little allusion is found either to the northern Midlands or the north of England. These parts, together with Wales, were still thickly wooded. They were either behindhand in their husbandry or possibly unvisited by any of the agricultural experts who have jotted down their experience on paper. The least fertile districts mentioned by these writers were Devon, Cornwall, Derby, Lancashire, Yorkshire and Cheshire.

The science of arboriculture did not escape the notice of the agricultural school of this century. Worledge,<sup>2</sup> whose book, it may be mentioned in passing, is the first of its kind to possess an index, and which is valuable if only for its dictionary of rustic terms, pays special attention to this subject. Blith too touched on the same topic in his *Improver Improved*. The former author describes the uses and propagation of the oak, elm, beech, ash, walnut, chestnut, service, birch, maple, hornbeam, quickbeam, hazel, poplar, aspen, abele, alder, withy, sally, willow, sycamore, lime, horse chestnut, fir, plane, larch, alaternus, phillyrea, bay, laurel, and privet trees. Such ornamental shrubs as the myrtle, box, juniper, tamarisk, arbor vitæ, laburnum, Spanish broom, laurestinus, woodbine, etc., are described, as well as the whitethorn, holly, blackthorn, pyracantha, elder, furze, and other plants suitable for fences. The nursing, transplanting, pruning, shrodding, cutting and felling of trees receives careful handling; and the orchard culture of apples, pears, cherries, walnuts, filberts, quinces, plums, medlars, almonds, currants, and raspberries is accurately described. The localities where the vine once flourished are cited, such as Bromwel Abbey in Norfolk, Ely in Cambridgeshire, and parts of Gloucestershire and Kent, all places where the name "Vineyard" was still retained in the author's

<sup>1</sup> Norden, *Surveyor's Dialogue*.

<sup>2</sup> Worledge, *Systema Agric.* The frontispiece is an illustration of a farm of the period, with the common lands, enclosures, and arable grounds.

time, and in some of which this term survives up to the present date.<sup>1</sup> Other wall fruits mentioned by the author are "apri-cocks," peaches, nectarines, gooseberries and currants, so that nearly all the fruit and the greater portion of the forest species which are now grown in these islands existed in the seventeenth century. The nursery for stocks, grafting, inoculation, raising fruit trees by seeds, stones, nuts or kernels, propagating them by layers, slips and suckers are all described with an accuracy that would put to shame a modern expert. The names of the varieties, such as Red Streak, White Must, Green Must, Genet Moyle, Eliots, Stocken Apple, Summer Fillet, Winter Fillet, etc., all good cider apples, have now of course long become obsolete owing to the introduction of other kinds; but a perusal of Worledge's process for cider and perry making might possibly prove of use amongst the farmers of the English orchard districts, whose recipes are often the outcome of long hereditary practice. This suggestion might possibly also apply to those secrets of hop culture and the oast kiln which Worledge unfolds with the greatest conceivable elaboration.

The garden seems to have been viewed by the Stuart writers as a part and parcel of every farm, and the old English idea that spade work deteriorated a soil<sup>2</sup> now gave way to the Flemish fashion, which had been to regard the farm as a mere extension of the garden. To the Dutchman the latter was but a miniature of the former, involving such greater finish and minuter touches as the artists of the Dutch school bestowed on their tiny genre paintings. By this time beans, peas, melons, cucumbers, asparagus, cabbage, pompions, both sorts of artichokes, french beans, large and improved varieties of the strawberry, coleworts and coleflowers, savoys, lettuce, beet, anise, carrots, turnips, parsnips, skirrets, radishes, potatoes, onions, garlic and leeks had taken root in English gardens.<sup>3</sup> Tobacco had been propagated for the short period allowed it

<sup>1</sup> On Mr. Cann Lippincott's Over Court estate there is a wood called "Vineyard."

<sup>2</sup> Rogers, *Prices and Agriculture*, vol. v., p. 57.

<sup>3</sup> Worledge, *Systema Agric.*

by statute law to exist in English soil,<sup>1</sup> and potatoes, which were very usual in foreign parts, were still confined within the garden fence. They were however finding universal favour as a relished edible when dished up with butter or milk.<sup>2</sup> Jerusalem artichokes were used for fattening swine as well as for human food. It must however be remembered that most of these esculents had only recently been introduced into the country. Hartlib had seen old men who could recall the first attempts of a Surrey gardener with cabbage and cauliflower plants, and turnip, carrot, parsnip, and early pea seed. People who wanted such luxuries had to send for them all the way to Holland and Flanders, and Hartlib himself is an eye witness to the time, not more than twenty years before, when the Gravesend gourmets would be sending to London for a dish of peas, while in the year 1650, when he was writing, he doubted if gardening or hoeing was practised at all in the north and west of England. Pot and salad herbs, as distinct from vegetables, were more common, and most households were kept well supplied with all the varieties still in use. In addition to these, pennyroyal was in great request for blood puddings, violet leaves for salads, and strawberry leaves for the pot.<sup>3</sup> As for those who were desirous of embellishing their estates with arboriculture, or adding fresh varieties of fruits to their orchards, they had to send sometimes as much as one hundred miles to the nearest nursery,<sup>4</sup> and that was an undertaking whose magnitude, we, in these days of railroads, are hardly in a position to realize.

*The Jewel House of Art and Nature*, which somewhat resembles the *Enquire Within* publications of the present day, was written by Sir Hugh Platt. It gives a large amount of varied and trivial information. If one wanted to kill a rat in a garner, construct a delicate stove to sweat in, dissolve coral or pearl, manufacture salts of herbs, or distil rosewater, he had only to refer to this work, but no one would turn over

<sup>1</sup> Worledge, *Systema Agric.*

<sup>2</sup> Blithe, *Improver Improved.*

<sup>3</sup> Norden, *Surveyor's Dialogue.*

<sup>4</sup> Hartlib, *Design for Plentie by a universall planting of trees.*

its pages in search of agricultural information, and we can but regret that the author's other work, styled *Adam's art revived*, scarce even in Blith's time,<sup>1</sup> was not more common than this old woman's recipe book.

In days of such crass ignorance, as that displayed by the London citizens in petitioning Parliament against the introduction of coal because of its stench, and that of hops as calculated to destroy the taste of drink and endanger the people's health, it was palpable to agricultural experts that a technical education must precede any reforms in the national husbandry. In the 4th edition of John Worledge's *Systema Agriculturæ*, edited by J. W. Gent in 1687, the author draws attention in his preface to the good work done for agriculture by the Royal Society, especially emphasising Mr. Evelyn's efforts to advance this science, and recommending the institution of subordinate branches in the provinces. But before this, Hartlib, far in advance of his age, was already advocating a seventeenth-century Cirencester College, and there is no knowing how much might have been done for England's welfare had such an institution been founded on the lines set forth in his treatise on the subject. Without the agricultural writers of the seventeenth century English husbandry would probably have made but little progress even under the fostering care of Cromwell. Journalism was in its very earliest babyhood. In 1641 the first newspaper describing the diurnal proceedings of both Houses might have been purchased at its publisher's, William Cook's, shop in Furnival's Inn Gate, and before the death of the king a hundred other papers were in existence,<sup>2</sup> but they were all at first weekly editions, though during the civil wars the printers managed to attain to a tri-weekly issue. These were times when the national news took days in travelling the length and breadth of the kingdom. Then, too, the scanty means of locomotion confined the farmer to his native county from cradle to coffin, so that there was no other means of communicating popular information save through the book or

<sup>1</sup> *Vide Blith, Improver Improved*, Introduction.

<sup>2</sup> Craig and Macfarlane, *Hist of Eng.*, bk. vii., ch. v.

pamphlet. The consequence was that implements and usages varied in almost every parish,<sup>1</sup> and that improvements, when they did happen to obtain a footing, made no further progress for long periods. We have seen how Blith first pointed out the advantage of growing clover for cattle, and how Weston<sup>2</sup> did the same for the turnip. Gradually it dawned upon the English farmer that he possessed the means of fattening cattle and sheep during the winter, but it is very doubtful if either of these plants would have ever received a fair trial, had not the Flemish immigrants afforded ocular proofs of their importance. So it was with all other agricultural innovations. Reginald Scot was writing on hop culture in 1574; Rowland Vaughan on irrigation in 1610; Blith on drainage in 1649, and John Forster on potato culture in 1664; but it took centuries before many of these new practices were widely adopted; thus in the last mentioned case it was not until the Board of Agriculture at the end of the eighteenth century had once more attracted public attention to the potato that its value as a field crop was generally recognised.

<sup>1</sup> Craig and Macfarlane, *Hist. of Eng.*, bk. vii., ch. iv.

<sup>2</sup> *Discourse of Husbandrie used in Flanders and Brabant*, 1650.

## The Stuart Era.

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### CHAPTER XXVII.

#### FROM RESTORATION TO REVOLUTION.

THE time had arrived when the men of Merrie England had received a surfeit of Puritan customs. The sad-coloured dress, the sour look, the straight hair and the nasal whine were beginning to pall upon all classes of society. The villager yearned for his wrestling matches and maypoles, the dilettante longed for the forbidden fine arts, and the churchman felt the want of his prohibited Book of Common Prayer. The national playgrounds had been long enough deserted, and the national pastimes of bear-baiting, horse-racing, cock-fighting, rope-dancing and bowling were beginning to be considered as discarded, for insufficient reasons of morality. Ruined actors were calling out for the re-opening of their playhouses, and the poor were clamouring for a renewal of the old Christmastide hospitalities.<sup>1</sup> The great Protector was dead, his successor a nonentity, and all eyes were turned with dread on such rulers as Lambert, Desborough and Harrison. Part of the soldiers were quarrelling among themselves at Blackheath, and the rest composed the army of Scotland. It was to their leader that the people now turned as a possible deliverer from the iron stratocracy which was cramping their freedom. Meanwhile Monk was sitting upon the fence, still uncertain as to the side on which he should alight. When at length he marched south at the head of 7,000 warriors, every one was on the tiptoe of expectation, and the country gentry turned out on all sides to meet him and implore his interference. The darkest

<sup>1</sup> Macaulay, *History of England*, ch. ii.  
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hour is the precursor of dawn, and when Lambert had escaped, sounded the call to arms, and failed in his attempt to embroil England once more in civil war, the crisis had passed and matters began to right themselves. A new parliament was convoked, and the national electorate proved what the country wanted, by returning, in lieu of the Rump, an assembly packed with the adherents of royalty. Nothing more was needed but to ring the bells, broach casks of ale, wave flags, play music and shout a hearty welcome to the returning representative of royalty. The time had arrived when the king should have his own again; yet not all that he had before, for military tenure and the feudal incidents of warfare were never restored to him, so that the landed gentry had now no barrier of grievance to stand between them and their natural instincts of loyalty. The disbanded soldiers, sullen and dispirited but honest and industrious, returned to the plough and wagon, and the employers of agricultural labour flocked to court and rallied round Charles as if he had been the best king that ever sat on an English throne. Henceforth, though foreign guns might be heard in the Thames, though the court had become the most profligate in Europe, though rents were falling five shillings in the pound, though pestilence might rage and half London be burnt to the ground, though the English sovereign had stooped to a position little short of vassalage to Louis of France, the owners of landed property continued to form an impenetrable rampart around the throne. Men who remembered the glories of Cromwell's foreign policy, exhibited no overt disgust for a king who had disgraced the name of England abroad. The sectaries, who had refused to countenance the High Church tendencies of the first Charles, now stomached the Romish leanings of his son; and the tax payers, who had cheerfully supplied the Protector with funds for foreign expeditions which always ended gloriously, ungrudgingly paid their aids to warfare which now invariably ended in disaster.

The Roundhead element having been eliminated from the land's possession, and estates having reverted once more to the Cavaliers, their original owners, there was no indecision amidst

the ranks of the squirearchy. If men fretted at the inferiority of their present ruler, they at any rate preferred his disgraceful patronage to the open hostility displayed by his predecessors. Their tenantry were at least left to their own individual control, and when a period of high prices ensued they raised rents to a height never before attained on English soil. From 1661 to 1690 was a period of agricultural prosperity; and what with the emancipation of their estates from feudal obligations, the legislation against Irish importation, and the increased rentals, English landlords, though poor in comparison to modern land-owners, had become extremely prosperous. The yeoman free-holders were also benefiting from the rise in prices, but the farming and labouring classes were, however, making but little headway, and it was only after the Treaty of Utrecht and close of the great war, that fresh agricultural improvements and better seasons afforded them a fair prospect of greater profits.<sup>1</sup> But a measure so revolutionary to the landed interest as the abolition of the feudal dues requires longer treatment at our hands than the cursory allusion conveyed in the foregoing sketch. It will be remembered that the step had been mooted as early as the reign of James I. An ordinance abolishing the court of wards and liveries had been passed by the Lords and Commons in 1645, but it remained a dead letter until the end of 1656, when the Barebone's Parliament not only confirmed this statute, but further enacted that "all wardships, liveries, primer seisins, and oustreleains, and all other charges, incident and arising for or by reason of wardship, livery, primer seisin or oustreleain, and all other charges incident thereunto, be likewise taken away from the said 24th of February, 1645; and that all homage, fines, licenses, seizures, pardons for alienation incident or arising for or by reason of wardship, livery, primer seizin, or oustreleain, and all other charges incident thereunto, be likewise taken away from the same date; and that all tenures in capite and by knight's service of the late king or any other person; and all tenures by soccage in chief be taken away; and all tenures turned into free and

<sup>1</sup> Rogers, *Six Centuries of Work and Wages*, ch. xvi., p. 466 sqq.

common socage, from the same date." By another Act of the same parliament, purveyance and compositions for pre-emption were removed, and these measures obliterated every incident of feudalism, except heriots and other dues payable to mesne lords or private persons. Now Charles, at the treaty of Newport, had consented to give up these dues for a fixed revenue of £100,000, and this clause of the treaty became the basis of agreement between parliament and his son. The difficulty that now presented itself was to find proper resources whence this commutation grant should be derived, and two schemes were promulgated for the consideration of the Commons. Lands held in chivalry, as opposed to those held in socage, were alone liable for feudal burdens, and it was suggested that these would be the fairest sources of taxation. The landed gentry and courtiers opposed to this suggestion a scheme taxing the whole community by an excise on beer and other liquors. The king for his part preferred the possibility of increased income which any growth of the national wealth out of this latter source of taxation would afford, rather than the stationary revenues from a fixed land tax.<sup>1</sup> To a nation intoxicated with loyalty, the wish of the Crown became the law of the land; the latter scheme was adopted, and by the statute 12 Car. II. c. 24 every feudal custom, except those already mentioned as reserved, and the honorary services of grand sergeantry, was for ever abolished. The whole landed interest rejoiced, not only its gentry but its inferior classes also. Church dignitaries, royalist nobles, and Cavalier squires who had been traversing their restored estates in sorrowful contemplation of their disafforested condition, or drinking to the king's health out of the pewter substitutes for their melted family plate, forgot the sacrifices they had made and forgave the king his luxurious extravagances in the joy that this concession brought them. The labouring classes romped on the village green, toasted the king at its tavern, and omitted to grumble at the increased price of their tipple in the thought that the royal purveyors would trouble them no more.

<sup>1</sup> Hallam, *Hist. of Eng.*, ch. xi.

In a speech of Bacon's, delivered in the first session of James I.'s parliament, we may gather how grievous these last exactions had become. The purveyors, he complained, had become "taxers" instead of "takers." They extorted from the people annual fines of money, sometimes in gross and sometimes in the nature of stipends, in lieu of their oppressive demands. If these were refused, they destroyed ornamental timber, defaced and despoiled mansions and other dwellings, exacted poundage out of the royal debts for themselves twice over, viz. once when received and again when discharged. If affronted they would watch for the temporary absence of a proprietor or his bailiff, and put their axes to some favourite shrub. They would seize the poor man's hay or poultry, and mulct him in poundage over its payment, which was neither assessed nor attested according to law. Though produce on the highways was exempted and the hours of purveyance limited to sunlight, they chose to ignore these regulations of the statute book, and no one knew when and where he might not be visited with their unwelcome presence, or, since they refused to exhibit their authority, by whom he was despoiled.<sup>1</sup>

We now come to a period when the sons of those who had fought at Edgehill, had, save in a few cases of longevity, succeeded to the possession of the family acres. The fervid loyalty of the previous generation had become weakened by time, and a reaction had set in. Few save the richest of the nobility could afford to attend the Court; and even the latter's income would not allow them to compete in splendour with the highly salaried or heavily pensioned courtiers and favourites of the sovereign. According to Gregory King, the average income of a temporal lord was £3,200 per annum, whereas such court favourites as Burleigh in Elizabeth's reign maintained twenty gentlemen retainers at a thousand pounds salary each, and had servants whose fortunes varied from one to twenty thousand pounds. Yet Burleigh was, practically speaking, landless.<sup>2</sup> The bulk of the landed interest remained therefore at home, living much the same life as the well-to-do yeoman of the

<sup>1</sup> Bacon, *Works*, vol. iv., pp. 805-6.

<sup>2</sup> Collins, *Life of Burleigh*.

present day. Its squires would vary the routine of farm life with periodical visits to market, and whenever news from the capital penetrated their isolated circles, it would arouse a momentary growl at the royal neglectfulness of their past services, or an imprecation against the baneful influences at work about their royal master's person. Most of them wore coats, whose every threadbare seam and ill-patched rent spoke eloquently as to the magnitude of their fathers' sacrifices in the royal cause. Even that awkwardness of manner engendered by long absence from court life, was in itself a badge of a loyalty which had spent as much as would have defrayed the luxuries of two generations. But coarse clothing and rustic manners were not in accord with the gallantry and gay plumes exhibited by the favourites of King Charles's palaces, and so the country gentry stopped at home and perhaps soothed themselves with the thought that their present dress, unlike the lace and ruffles of their fathers, aroused no popular odium.

But when the creatures upon whom he had showered riches turned against the king, when the officers of his own household deserted him, and when the Secretaries of State, and Lords of his Treasury were joining the opposition, up rose the English landed classes to a man and swarmed up to the capital in order to rally around his sacred person, until the danger was over. The Church was the sole institution which ranked before that of royalty in their affections, and when at length James II. forced them to make choice between the two, he took the only possible step to estrange a class which was the most devoted of all his subjects. Any historian of the English landed interest would be inspired with eloquence over the description of so sturdy a form of manhood as these squires of the Stuart era must have been; but where the master pen of Macaulay has been beforehand it would be superfluous for others to follow.<sup>1</sup> With the graphic touches peculiar to his genius he has depicted these needy, ill-educated, hard swearing patricians, now examining samples of grain or handling

<sup>1</sup> Macaulay, *Hist. of Eng.*, ch. iii.

pigs at market, anon imbibing beer at home, until they are laid in swinish intoxication under their own hospitable tables. We can see them in their taverns making agricultural bargains over the tankard, and we can see them in their manor houses, with the cabbage plants and gooseberry-trees blocking the front doors, and the garbage of the farmyard mounting as high as the transoms of their bedroom windows. We can hear the squire as he fills his after-dinner pipe, toast the king in old October and heartily curse all foreigners and every form of heterodox religion. We can picture the family circle, with the old man in the ingle nook still garrulous about Goring and Lumsford, or the wound he received at Naseby; with his stalwart sons around him, whose knowledge of genealogy and field sports alone redeemed them from utter illiteracy; with the wife curing marigolds or making crust for the venison pasty in the kitchen, and with the daughters stitching and spinning in the parlour, or brewing gooseberry wine in the still room. What a flutter in this domestic dovecot must the unexpected arrival of some court gallant have occasioned. How the girls' hearts must have palpitated at his good looks and fine bearing. With what mingled feelings of envy and admiration must the rude boors his cousins have heard his exploits in the Flemish campaign. How he in his turn must have inwardly sneered at the uncouth gait and provincialisms of these bucolic kinsmen, and lastly how readily would both sides have crossed swords had the least inkling of such thoughts appeared on the surface. Generous, honourable, unpolished, punctilious, bigoted fellows were these Tories of the old school, the progenitors of the so-called "Stupid Party," who long after the House of Brunswick had established itself securely on the throne, drank "to the king over the water;" who opposed to the utmost the repeal of the Corn Laws, the introduction of the railroad, the abolition of slavery, the extensions of the franchise, and every other Radical innovation, good, bad or indifferent. With all their faults and follies, England would have never been half so great without such staunch supporters of her vested interests.

It seems almost incredible that any king, however foolish

and bigoted, could have so invited disaster as to have estranged these easily managed gentlemen. Yet James II. contrived to do so, and that after many warnings. He ascended the throne amidst the wild enthusiasm of his Tory supporters. In a brief interval his Popish leanings drove half this party into the arms of the Whigs. Even then he was afforded a further opportunity of regaining their affections when the Rye House plot scared them back into Toryism. The House of Commons, refilled at this period of panic with a body of men devoted to his interests, might have kept his enemies at bay as long as he lived, but the king's bigotry drove him to ruin. The disaffected Whigs at home communicated with their exiled friends abroad. Insurrection broke out in Scotland. Its leader, Argyle, was taken prisoner and executed, and the danger seemed over. A second insurrection occurred in the West of England, and Monmouth its leader met with a similar fate, and again the danger was averted. But the king would read no warnings in these repeated signs of his people's disaffection. A struggle began betwixt the Anglican and Roman Churches, and the king siding with the latter, persecuted the representatives of the former. Riots broke out all over the country, and William of Orange came to the fore as champion of the opposition. The Whigs rallied round him, but the Tory squires were only half-hearted. Their love for the Anglican Church had overpowered their devotion to the throne, and had William's relationship been as close to the former as it was to the latter, their hesitation would not have lasted a moment longer. He had however been bred in a hotbed of Presbyterianism and this fact divided once again the landed interest into two hostile factions. As the royal bigotry increased, and the very tenets of Anglicanism became jeopardised, William's following increased in proportion as that of James decreased. The Declaration of Indulgence, the prosecution and committal to the Tower of the Bishops, and the birth of the Prince of Wales, were all events which precipitated the approaching revolution. The greater bulk of the Tory Churchmen joined the Whigs and openly proved their defection by neglecting the usual loyal greetings to the judges on the summer cir-

cuits of 1688. While the parsons and the squires were leaving him in shoals, while the army was evincing its disaffection, and while the French king and other influential friends were repeatedly warning him, James took no heed. When, however, William's preparations were complete, and the invasion of England was only postponed by contrary winds, he took the alarm and attempted to conciliate his subjects. But promises wrung by terror did not deceive the nation. Before even this fresh departure of the king's could have penetrated further than the court, William, surrounded by the representatives of every English party, had landed at Torbay, and after a short period of hesitation and half-hearted resistance, the males of the Stuart Dynasty had vanished for ever from the English throne.

For the nation as a whole the Revolution effected two fundamental reforms, as pointed out by Professor Rogers. First, it made supply depend upon the House of Commons; and secondly, it affirmed that the monarch should be of his subjects' religion instead of their being of his. "Save," says this author, "that the sovereign's creed should be Protestant, Parliament did not and could not define it further. William was a Dutch Calvinist, Anne a High Churchwoman, George a German Lutheran. Neither the first nor the last had, before he became king, been familiar with episcopacy. Both certainly conformed to the English ritual, but William's bishops and George's bishops had little in them of the policy of Laud or Sheldon."<sup>1</sup>

What the Revolution did for the special subject of our history we shall see better when we have examined the economy of the landed interest during the later Stuart period, and compared it with that after the Revolution.

<sup>1</sup> Rogers, *Prices and Agriculture*, vol. v., Introduction.

## The Later Stuart Period.

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### CHAPTER XXVIII.

#### THE DOMESTIC ACQUIREMENTS OF THE LANDED INTEREST.

THE times of which we are speaking were the days when they executed, burned in the hand, or whipped felons; when spiteful old women were condemned to the stake as witches; when the swarms of highwaymen who infested the main roads were regarded as popular heroes; when wild boars still ravaged the crops, and the last wolf had only just been hunted down; when red deer herded together in the wilds of Hants and Gloucester; when cattle lifting was still a fashion in the country betwixt Tweed and Trent; when border farmhouses were fortified and their inmates slept armed; when the parish bloodhound hunted down freebooters; when it was necessary for the judges on northern circuits to be escorted by armed attendants; when one-third of England was a barren waste, and two-thirds of its inhabitants could scarcely sign their own names. And yet this was the age of Milton and Dryden, of Hobbes and Bunyan, of Lely and Grinling Gibbons, and to come back to the special subject in hand, it was the age of Houghton and of King. Men such as the last two mentioned must have written their books out of sheer love for writing and not from any hope of emolument. There were no printing presses out of London, save those of the two universities, while north of the Trent an editor was as rare as a nightingale. The library of a manor or parsonage house consisted generally of half-a-dozen standard works, and as long as freightage dues continued as high as they were in the Stuart days no literature but that which

could be conveyed in a post bag was likely to find its way into the hands of the rural gentry. More honour then to John Houghton the apothecary and Gregory King the Lancaster herald. The former was the first to edit a scientific weekly paper on agricultural and trade statistics.<sup>1</sup> For eleven years he persevered with this literary venture until a growing business obliged him to abandon the attempt. But if his editorial work had not been the cause of his increased trade it had at any rate elevated his social status by gaining for him the coveted fellowship of the Royal Society. He and King, whose mathematical bent led him into all kinds of queer calculations, have proved of more value to the experts of this generation than to those of their own. To such a work as *The Prices and Agriculture* of Professor Rogers for instance, the writings of these Stuart statisticians have no doubt proved a god-send; but it is more than doubtful if they were read by their contemporaries outside a select circle in the metropolis.

Of other works useful to our present purpose, there is a revised edition of Camden's *Counties*, corrected up to 1700; Yarranton's *England's Improvements by Sea and Land*, 1677-8; Sir Jonas Moore's *History of the Great Level of the Fennes*, 1685; the same author's *England's Interest, or the Gentleman and Farmer's Friend*, and Leonard Meager's *Mystery of Husbandry*. In the purely agricultural works we cannot expect anything fresh on the subjects discussed by Hartlib, Blith, and Worledge. It has already been pointed out that all agricultural progress was extremely slow, and to further illustrate this feature of the times let us examine the case of the turnip.<sup>2</sup> In 1562,<sup>3</sup> it had been boiled with butter and used solely as human

<sup>1</sup> Houghton wrote two works, viz. *A Collection of Letters for the Improvement of Husbandry and Trade*, London, 1681-1703, and *An Account of the Acres and Houses, with the proportional Tax etc., of each County in England*, London, 1693.

Gregory King wrote *Natural and Political Observations*, from which work Davenant copied largely when writing his book.

<sup>2</sup> The turnip was introduced some time during Hartlib's life. He alludes to it in the third edition of his *Legacy*, but not in the earlier editions.

<sup>3</sup> Tusser, *Five Hundred Points of Good Husbandry*.

food; in 1645<sup>1</sup> it was being given either boiled or raw to the pigs; in 1684<sup>2</sup> it had been adopted as a field crop for winter sheep feed, but in Houghton's days it was still limited to the East Anglian farming area.<sup>3</sup> So also in the case of the potato. Though Raleigh introduced its cultivation into Ireland with such good effect that the soldiers of the conflicting armies escaped the consequences of a bread famine by its support, and though, no doubt, they advertised its excellent qualities on their return home after the wars, it was a long time before it followed them across St. George's Channel. Even in Houghton's days people preferred to pay 6d. and 8d. per lb. for the more palatable species imported from Spain to the inferior kinds of home production, and there is no evidence whatever of even its partial cultivation as a field crop in the allusions made by this author to its uses and culture.<sup>4</sup> The general adoption of clover culture is probably the one exception that proves the rule. It was introduced in 1655, and ten years later it was being cultivated on most soils in much the same fashion as it is now. But if not an epoch of progress, it was one full with future promise for the landed interest. Thus the introduction of green crops was the germ of the coming four-course system; the allusion by Markham to the silos of the Azores, that of our modern ensilage system;<sup>5</sup> the discovery by Dud Dudley of sea coal as a smelting agent, that of the pig iron industry; the description by Worledge<sup>6</sup> of a new form of corn setting, that of the drill, and the literary sketch by Blith of an instrument which ploughed, sowed and harrowed, all at the same time, that possibly of some future invention. The truth is, that

<sup>1</sup> Blith in his *Improver Improved*, alludes to this practice in Sir Reveston's time.

<sup>2</sup> Worledge's correspondence with Houghton in *Collection of Husbandry and Trade*.

<sup>3</sup> Houghton, *Collection of Husbandry and Trade*, vol. i., p. 218.

<sup>4</sup> Id., *Ibid*, vol. ii., p. 468.

<sup>5</sup> Markham wrote three principal works. 1. *The English Husbandman*, 1613. 2. *Farewell to Husbandry*, 1649. 3. *The Enrichment of the Weald of Kent and Sussex*. Hartlib also alludes to the silo system, but deprecates its adoption in so wet a climate as England!

<sup>6</sup> See Worledge, *Systema Agric.*

these seeds of coming agricultural growth were laid in the fertile soil of Cromwell's Protectorate, and their germination was checked by the political events of the ensuing reigns. They were mostly the exotic products of Flemish brains, and they required the genial soil of intelligence to enable them to fructify. The media by which they were introduced into this country were, as we have already pointed out, the pens of Cromwell's partizans. Eagerly as such works were read by the Roundhead farmers, probably the mere bigotry of Restoration loyalty would prevent their being used by the next generation. It has been already pointed out that many of these writers had directed attention to landlord's abuses, and it is more than probable that amidst a squirearchy so narrow and uneducated as that depicted by Macaulay, the whole class of this literature was quite as much tabooed as are the works of the extreme Anglican school by the Evangelical party at the present day. If we add to drawbacks such as these, the universal want of capital amongst every class of the landed interest, the uncertainty of tenure, the difficulties of locomotion and the general insecurity of the times, we have ample reasons for the want of progress that has been described as a feature of this age.

Out of a total population of five and a half millions in the England of Gregory King's day, 160,000 were freeholders, 150,000 farmers, and 849,000 houses were occupied by the agricultural community. Out of a total area in England and Wales of 39,000,000 acres, this writer computes<sup>1</sup> the area of arable land at 9,000,000 acres, averaging a rent of 5s. 6d. per acre; pastures and meadows at 12,000,000, averaging 8s. 8d.; woods and coppices at 3,000,000, averaging 5s.; forests and parks at 3,000,000, averaging 3s. 8d.; barren lands at 10,000,000, averaging 1s.; houses, gardens, orchards, churches and graveyards at 1,000,000; and water and roads at 1,000,000. The whole national rental he fixes at £12,000,000 and the annual yield of corn at 90,000,000 bushels, realising a gross annual value of £11,338,600. The remaining annual produce

<sup>1</sup> Gregory King, *Natural and Political Conclusions.*

he puts at a value of £12,000,000, the national livestock at £18,287,633, and minor products at £3,000,000. Averaging the annual income of a temporal lord at £3,200, that of a bishop at £1,300, a baronet at £880, a knight at £650, an esquire at £450, a gentleman at £280, a well to do freeholder at £90, the less prosperous of the same class at £55, and the farmer at £42 10s., he considers the three national saving classes to be the bishop, the merchant and the farmer, proportioning their ability to lay by in the order named. If we except an error of 1,700,000 acres in the total area of England and Wales, and a too low computation of the price of wheat, King's statistics have stood the severe criticism of Professor Rogers,<sup>1</sup> and, what is even more conclusive of his accuracy, his census calculations, arrived at by means of the official returns in 1690 for the purposes of levying the hearth tax, tally with the results of the religious census instituted by William III., and with Mr. Finlaison's later calculations obtained by means of a careful examination of the baptismal, marriage and burial registers of those days.<sup>2</sup> Comparing the population of one hundred years previous, which Guicardini reckoned at two millions, and Sir Edward Coke and Chief Justice Popham at only 900,000<sup>3</sup> it is noticeable that the nation, even at the higher computation, had more than doubled itself. Comparing, too, the average incomes of the landed aristocracy with those of the later Tudor period, we shall find a large diminution. Though the magnificent display of the old livery days had been abolished there had still lingered an expenditure on dress and luxurious living out of all proportion to a man's income. The splendid Tudor and Jacobean country seats required a keeping up which ate away a large item annually of the estate rental. Decade after decade a larger proportion of income was required to be sunk in agricultural improvements. Then came civil war again, in which, so long as it lasted, the expenses on one side at least

<sup>1</sup> King estimates the price of wheat per bushel at 3s. 6d. and Rogers's estimate of the price of wheat per bushel is 4s. 10½d. to 5s. 1½d. *Prices and Agric.*, vol. v., ch. 8, p. 92.

<sup>2</sup> Macaulay, *Hist. of Eng.*, ch. iii.

<sup>3</sup> Hume, *Hist. of Eng.*, Appendix iii.

were almost entirely defrayed by the landowning class. Estates were mortgaged up to the hilt, and many of their tenantry, let alone their owners, were ruined. Confiscated lands fell into the possession of needy Parliamentarians, only to revert back at the Restoration to the needier hands of their original owners. In fact, if rents had not doubled themselves between 1600 and 1699,<sup>1</sup> it is a question if there would not have been a far greater sprinkling of the English squirearchy not only at the American plantations, but even in the cutpurse profession of the English highways.

No wonder, then, that the Tudor and Stuart days were specially marked by the prevalence of crime. All that can be said for the latter period is that it was not so bad as the former. 72,000 thieves and rogues, besides other malefactors, were hanged during the reign of Henry VIII.<sup>2</sup> at the rate of 2,000 per annum, and though in Elizabeth's reign this item drops to three or four hundred, it is ten times as much as the annual cases of capital punishment a century later.

The large inroad of gipsies, which began in the reign of Henry VIII., and by the end of the sixteenth century had increased the total of this nomadic community to over 10,000 souls, may have had something to do with these heavy criminal statistics. That these people were specially addicted to every kind of misdemeanour may be inferred from Harrison's suggestion that their extirpation can only be brought about by the enforcement against them of martial law.<sup>3</sup>

The subject leads us by easy stages to that of Local Jurisdiction with its Justices of Assize, its Courts Leets and Baron, and its County Magistrates, institutions which had so much to do with the detection, prevention and suppression of crime.

The first named had replaced the Justices in Eyre instituted in the reign of King Henry II. In the time of Edward III. the counties had been divided into circuits, and two of the king's justices had been appointed to travel these divisions twice a year for the trial of prisoners and gaol delivery. Having

<sup>1</sup> Davenant.

<sup>2</sup> Harrison, *Description of England*, bk. ii., ch. 11.

<sup>3</sup> Id., *Ibid.*, bk. ii., ch. 10.

also to take cognisance of all assizes of novel disseisin they were also called Justices of Assize; and further, having to try all issues between party and party in any of the king's three courts, by Recognitors of the same peerage, they obtained from the writs directed to the sheriffs for these trials, on which were written the words, "Nisi Prius," the further appellation of Justices of Nisi Prius.<sup>1</sup>

The Justices of the Peace were altogether a different division of the State magistracy. Though probably in existence from the time of the Conquest, or at any rate from that of Edward I, they were still increasing in importance. As the Courts Leet died out, the number of justices increased in each county from three or four in Edward III.'s reign to six and eight in Angevin years, threescore in Spelman's time, and without limitation now-a-days.<sup>2</sup> About the beginning of the Tudor period their powers were largely augmented and extended to a restricted administration of the laws for poor relief, the passing and punishing of vagrants, the repairs of highways, and the business of parochial taxation. The qualification for the office necessitated the selection of a landed gentleman by the king himself, though it was and is always relegated to the king's representative in each county.

But during the time with which we are at present dealing the Court Leet was still an important factor in local government. Unlike the Court Baron it was a royal institution, and the steward who presided was as much the vicegerent of the Crown, in which the administration of all justice is vested, as was the Judge of Assize. It was the judicial court of the Leet or Hundred, and unless there existed the district of the Leet or Hundred no court of the kind was possible. On the other hand, the Court Baron was the judicial assembly of the manor, whose president, the steward, was but the vicegerent of the lord. There could be no Court Baron without a manor, and no manor but by prescription.<sup>3</sup> Neither kind

<sup>1</sup> Camden, *Counties*, ed. 1701. *The Law Courts of England*.

<sup>2</sup> Jacobs, *Law Dictionary*, *sub voc.* Justice of the Peace.

<sup>3</sup> For this description of Courts Leet and Baron the reader is referred to Kitchen, *Court Leet*, 1663.

of court could exist without suitors, and neither kind of court could be created. The Court Leet held jurisdiction over offences and annoyances to the commonwealth. The Court Baron, on the other hand, enquired into injuries, debts, and trespasses against the community of the manor. In the former was administered the view of Frank pledge, and the loyal oath to all who had attained the age of twelve. In the latter enquiry was made into tenures, homages, services and customs, and in it suits were made to the lord. The former was held twice a year, at Easter and Michaelmas, in any place within the Hundred, wherever it pleased the lord. The latter might be held at any time and anywhere within the manor, so long as the tenants should have sufficient notice of suit. But let us enter in imagination a Court Leet, and listen to the business of the day. The steward has previously made a precept as follows:—"J. K., Steward to the Bailiff thereof, health,—I command likewise and appoint, that diligently you give to understand the view of Frank pledge, of the court thereto to be held against the Thursday; that is to say, the sixteenth day of October, next coming; after the date of these presents; and have there this precept. And as, etc., Dated under my seal, the first day of this month of October, the year of the reign of by the Grace of God, of England, France and Ireland; Defender of the Faith."

At the beginning of the Court Roll is then entered in the following manner—

"Visus Franc. Plegii cum Cur J F Clerici ibid. Tent die Jovis, viz., Decimo sexto Die Octobris, Anno Regni Domini nostri Dei Gratiae Angliae, Franciae, et Hiberniae, Fidei Defensoris, etc., vicesimo primo Tent. per J K Senescal. ibid." Being a king's court the bailiff stands up and makes proclamation thrice<sup>1</sup> of the words "O yez," and then says, "If any man will be essoyned, and in Court Baron, if any will be essoyned or enter any plaint, come you in, and you shall be heard." The steward next says, "Essoynes and profer of suit and plea" three times, and thereupon enters the essoyn

<sup>1</sup> This was enjoined by 21 Ed. IV. fol. 87.

in the Court Roll. He then proceeds to impannel the jury,<sup>1</sup> and swears them as follows:—" You shall enquire and faithfully make presentment of all things which I shall give you in charge ; your companion's counsel, the king's and your own you shall keep ; and you ought to present the truth and nothing but the truth ; So help you God." The foreman first, alone, and then the jury in threes or fours come to the Book and are sworn, to whom the steward thus speaks, "The same oath which J. S. your foreman hath taken of his part, you for your parts shall come to the Book together, and shall be sworn together, as afore is said."

The petty treasons and felonies about to be tried, though enquirable and presentable in a leet, were not all punishable there. They were written and indented, and one part remained with the steward and the other with the jury to be delivered to the Justices of Assize at the ensuing gaol delivery of that particular county.<sup>2</sup> Such were counterfeits of the King's seal or arms and money of the realm;<sup>3</sup> murders, man-slaughters, rapes, burglaries, robberies, incendiарisms, thefts, taking doves and young pigeons, poaching deer and other game, petty larceny, etc. Those offences inquirable, presentable, and also punishable, were neglect of capital pledges, refusals to swear oaths of loyalty by all over twelve years of age who have resided within the lordship a year and a day, villains fugitive beyond a year and a day without claim, neglect of customs or services due to the court, annoyances upon land, wood, water, blocks, stocks, ditches and hedges, diversion of ways, waters, ditches, or paths, encroachments, nuisances, trespasses, eavesdroppings, corruptions of waters, vagabondage, false weights and other deceits of artificers, abuses of the assise of bread and ale, appropriations of treasure trove, estreys of horses, sheep, hogs, beasts or swans, "waifes," fugitives and outlaws, pounds broken, neglect to discharge the common fines due to the leet at Michaelmas, non-observance of the king's claims on wrecks of the sea,

<sup>1</sup> By 6 Hen. IV. fol. 2, a presentment in Leet was to be by twelve.

<sup>2</sup> Compare 17 Hen. VIII. fol. 2, and 1 Edw. III., last chap.

<sup>3</sup> 27 Hen. VIII. c. 2.

and sturgeon, improper apparel, wrongful use of the crossbow and hand-gun, omissions to provide crow nets, destruction of fish fry, unlawful games, the hundred's recompenses for escaped robbers, neglected highways, refusal to take musters, illegal mortmain, rioting, netting of pigeons in winter, tracing of hares, wrongful retailing of Gascoyne or French wines, etc., etc.

The steward next proceeds to enquire into the defaults and pains presented at the last leet, which, if not amended or otherwise unsettled, require still further attention by the court.

This business completed, the "cryer" again makes proclamation three times, and the steward rises and says,—“If any can inform the steward or the jury of any petty treason, felony, petty larceny, annoyances, or bloodshed, pound broken, or of rescues, or of any other thing, made against the peace, or of any person of common ill-behaviour within the leet, or any workmen using common deceit, or of any common misdemeanour of any officer or other person there, or of any “waife,” estreys, treasure found, or of any other thing here inquirable, come you in, and you shall be heard.” Then the witnesses come in, are sworn in turns, and give their evidence to the jury, upon which the steward addresses the latter thus—“Go together, and enquire ye of the matter of your charge, and when you are agreed, I shall be ready to take your verdict.”

In giving sentence the steward had to bear in mind two considerations: first, the laws on each particular offence, which required of him a knowledge of the statute book, only attainable by a lifelong legal practice; and secondly, the extent of his authority. This latter was carefully hedged in with plentiful limitations. He could, for example, authorise the bailiff to distrain,<sup>1</sup> fine, and even imprison a juryman who refused to be sworn,<sup>2</sup> swear any stranger who came within the precincts of the leet,<sup>3</sup> send a prisoner taken for felony to gaol,<sup>4</sup> and assess a fine for contempt made in leet. He was, in fact, the judge of the Court Leet, and the suit at this court was called “suit

<sup>1</sup> 16 Hen. VII. fol. 14.      <sup>2</sup> 31 Hen. VI.

<sup>3</sup> 8 Hen. VII. fol. 4; 11 Hen. VII. 14; 21 Hen. VII. fol. 40.

<sup>4</sup> 13 Hen. IV. fol. 12.

real," inasmuch as it was a king's court. But he was as well the judge of Record in leet,<sup>1</sup> and as such, though his bailiff that served him was not answerable for his unlawful acts, he was, as long as the Court of Star Chamber lasted, liable to be punished by it for misdemeanours, and in this respect, his powers did not exceed those of the justice of the peace.

The manner of keeping a Court Baron differed from that of the Court Leet, not only in the business transacted, but in the formalities observed. The entry on the Manor Roll ran as follows:—

"Curia R.F.C. ibidem tenta die Martis, videlicet decimo quarto die Maii, Anno Regni Regis — Dei Gratia, Angliae, Franciae et Hiberniae fidei defensoris, etc. Tent per J. K. seneschalllem.

J. S. J. D.<sup>o</sup> et R. R. Escoine de commune vel escoine prosecta Curiae per R.R.

Johannes Doo	Robertus Dodg
Richardus Roo	Thomas Lodge
Johannes Den	Adam Clarke
Richardus Fen	David Park
Walterus Hollen	Henricus Roo
Robertus Allen	Wilhelmus Croo "

After the style of the court is entered, the steward makes one "oyez," calls the suitors, makes another oyez, and says,—

"If any will be escoyned, or enter a plaint, come you in and you shall be heard."

The escoyne is then entered, the plaint determined, the jury empanelled and sworn. A third "oyez" is proclaimed, and the steward addresses the jury at great length. He begins by showing by whose authority they are there assembled. He proceeds to classify the causes of their meeting under three heads. (1) That as residents within the precincts of the leet they are bound to appear. (2) That as copyholders, freeholders, or tenants of their lord they should make him suit every three weeks if so warned. (3) That they might learn the laws, so as to know what things to follow and what to avoid. He then exhorts them to act with truth, justice and judgment, for the sake of the duties that they owe their God, the commonwealth, themselves, their relatives and posterity. He then proceeds to make the charge in Court Baron, which

<sup>1</sup> 12 Hen. IV. fol. 3.

practically covers all the intricacies of manorial customs and tenures ; a laudable practice when we come to consider their ramifications and diversities on every separate manor and in a country where “ *ignorantia juris haud excusat.* ”

We have already pointed out that in the Court Leet the steward was judge, but in the Court Baron the suitors occupied this office, unless they all happened to be copyholders. The steward in fact only became judge when the freehold was in the lord, *i.e.* when all the suitors held base estates only in the manor.<sup>1</sup> It was however as essential for the steward of the Court Baron to be skilled in legal matters, as it was for the steward of the Leet Court, so that there could be no excuse for “ *reseising* ” a cause on account of some error of judgment.

<sup>1</sup> 12 Hen. VII. fol. 17, 6 Ed. 43.

## The Stuart Period.

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### CHAPTER XXIX.

#### THE BUSINESS OF THE COURT LEET.

We have reached a period in the national history when real property had gradually grown in importance, until its relative value had surpassed that of the other form of national wealth known as personality. The rights of ownership had been more and more jealously preserved and its wrongs more and more jealously opposed ; until in fact there had grown up about the possession of land a network of statutes, judges' rulings, and precedents, which securely hedged in and protected it from outside interference. What has been technically termed the Law of Torts had already grown to such proportions as to occupy much of the time spent by steward and jury in the manor hall where the Court Leet generally assembled. It is true that, as compared with our modern law practice, the sum of illegalities embraced by this with difficulty defined term of Tort becomes dwarfed to an insignificant item in the statute book of the Stuart days. There were, for example, far less intricacies then in the process of distraining, in the subtle distinctions between various kinds of fixtures ; in the liability of one neighbour to fence in and another to fence out ; in the perplexing division of repairs into tenantable and decorative ; in the powers of riparian owners ; in the rights concerning air and lights ; and in the numerous other subjects which crop up now-a-days to set two otherwise friendly neighbours at variance. But we have only to compare the business of a Court Leet presided over by a Jacobean steward, with the same assembly presided over by a Plantagenet seneschal, to note not only the

increase in these kinds of offences, but the enhanced value with which landed property had come to be regarded.

And here let us turn aside to seek a further possible cause for that confusion in modern minds respecting mediæval courts to which we have alluded in an earlier chapter. It was pointed out that the Court Leet appeared to have been held in the same place and under the same presidency as the Manor Court. It is now no impossible suggestion that it was also held at the same time. This would tend to still further confuse the minds of modern theorists, whose evidence is principally the results of a careful examination of the early Court Rolls. It will be remembered that the solution of the difficulty put forward by us was, that both kinds of assembly, though held at the same court, presided over by the same person, and (as it is now still further suggested) for some time at least fixed on the same day and hour, were after all kept distinct by a variation of their formalities which could deceive no one attending them. It is quite possible that, at an early stage of the national history, the business items of both courts were so trivial as to be quite capable of transaction in one day, and therefore that, for the sake of convenience, a tacit if not formal consent was given to such a practice. If, then, on a similar plea of convenience, the court scribe entered both sets of transactions on the same roll, the mystification of the modern antiquarian becomes natural and at the same time explicable.<sup>1</sup>

But at the period under discussion, so imperceptibly but surely had both courts drifted apart, that the business of the one in no way corresponded to or interfered with that of the other. Bit by bit their jurisdiction in more important matters had been relegated to the assizes, so that in the reign of Charles II., though the charters granting the pit and gallows had never been formally revoked, the Countess of Derby was heavily fined for the execution of William Christian.<sup>2</sup> Gradually had offences against the commonwealth been relegated from

<sup>1</sup> The reader should study chapter iv. of Rogers, *Prices and Agric.*, to see not only the variability but the extent of the justice transacted in the mediæval courts.

<sup>2</sup> *Id., Ibid.*

the Manor Court to that of the hundred, and fresh disputes and fresh causes for legislation had increased the business of the leet jury much in the same proportion as greater powers and better education had increased that of the suitors in the Estate Court. At length (for it would leave the historical sketch of these courts incomplete were it not brought down to present times) as the population of certain districts thickened into town-like proportions, the corporations replaced the leet and manorial courts, and charters vested in these later bodies the old powers of the leet and baronial presidents. Finally the Courts of Quarter and Borough Sessions separated the civil from the criminal jurisdiction, and rendered the use of these older assemblies as well as of their officials obsolete. The constable was employed elsewhere, but the head-boroughs, ale-conners, leather-searchers, and bellman disappeared for ever. Still one or two boroughs and a manor here and there cling to the old customs, which linger on to attract and delight the American professor or colonial antiquarian, though the matter-of-fact burgess may term them "tomfoolery."<sup>1</sup> The curious visitor to Warwick on a court day may thus, if he choose, watch the proceedings of the jury of presentment, and the view of frank pledge submitted for the consideration of the suitors just as it used to be in Saxon times, when no man could be a free-man or possess a seat in the Court, unless he could obtain two neighbours to act as his surety, and the court now as then meets annually to examine the claims of all those who desire to be entered on its lists. Thus, too, the corporation of Manchester a few decades back, bought the manorial rights from the lord ; and Professor Rogers<sup>2</sup> tells us (we suspect with glee) that Cobden, the greatest champion of a free trade in corn, held by a strange irony of fate the office of ale-taster in that ancient manor, a post associated with perhaps the strongest protectionist statute ever passed by any legislature, native or foreign, modern or ancient.<sup>3</sup>

By the transference of the machinery of police from the

<sup>1</sup> A fact.                   <sup>2</sup> *Prices and Agric.*

<sup>3</sup> *Assisa Panis et Cervisice.*

parish to the Justices' office or the Quarter Sessions the landlord's *ex-officio* claim to the magistracy of the district expired; and, as Rogers points out,<sup>1</sup> the old system, concentrating as it did the functions of local discipline in the steward and inhabitants of a parish, exercised a control and enforced a responsibility which was so effective in the thirteenth and fourteenth centuries, and which was indifferently compensated for by the authority of an individual or a bench of magistrates. This same author even goes so far as to attribute the increased vagabondage and destitution of the later Tudor period to this cause. Here, however, we must beg to differ, for this destitution is more probably attributable to the abolition of monastic poor relief, an event it immediately succeeded.

An important item of the business in the Leet Courts was the proper repairs of the highways. Macaulay has drawn one of those vivid pictures for which he is celebrated, of their condition at this period. Canals there were none, and the communication by water was an insignificant item in the internal traffic of the nation. Ruts were deep, descents precipitous, and the lines of demarcation between what was the route and what was unenclosed heath and fen ill-defined. In other places a narrow carriage way passed between mudbanks, which occupied a large portion on each side of the legitimate track. People frequently lost their way by getting off the beaten path, coaches stuck fast in the mire, and altercations constantly occurred between opposing carriers, neither of whom would give place to the other. The inundation of rivers menaced the travellers' lives with a watery death, and none but the strongest horses or oxen could pull their loads through the bogs of Kent and Surrey. There is no wonder then that markets distant only a few miles were inaccessible in winter, and that the fruits of the earth were often left to rot where they grew. The richer travellers passed through the kingdom in private carriages and hired coaches, whilst their luggage and inferiors were jumbled together in stage wagons. Heavier materials, such as coal, were carried by

<sup>1</sup> Rogers, *Six Centuries of Work and Wages*, p. 420.

sea, and through some parts of England the people and their goods travelled the highways in cavalcades of pack-horses. The expense of the shortest journeys was enormous, for horses were dear and inferior. The imported greys of Flemish breed far surpassed in strength anything bred in this country, a circumstance which gave rise to the old proverb, that the grey mare was the better animal.<sup>1</sup>

The administrative machinery of highway repairs was also unsatisfactory, as we now propose to show. By the statute 2 and 3 P. & M. c. 1, two surveyors, bound to serve under a penalty on refusal of twenty shillings, were elected each Easter week to superintend the ensuing year's work. The following Sunday appeared on the church door a notice appointing to every labourer in the parish his four days' roadwork. Every owner of a carve of land, pasture, or cart had to be there with the men upon pain of paying ten shillings a day, and every householder, cottager and labourer, not being hired servants, had also to contribute eight hours' labour for a similar period. In the following reign<sup>2</sup> the term was extended to six days, and the surveyors were authorised to take materials for road repair from stone quarries, cinder heaps, and gravel pits, etc.; to turn watercourses, scour ditches, and compel owners, under penalties, to cut roadside trees and hedges, and clear ditches in cases where any obstruction to the people's passage was thus caused.<sup>3</sup> Every cottager possessing goods assessed at five pounds, and every owner of forty shillings in land, had to find his two men to work six days. People who owned land in several parishes had to find carts for each of these districts. The freehold of the highway belonged to the lord of the manor, but the passage for the public to the king.<sup>4</sup> This circumstance constituted a title to the former of proprietary rights over the roadside timber, hedges, and ditches, and also a liability on him to keep such in proper order.<sup>5</sup> The free-

<sup>1</sup> Macaulay, *Hist. of Engl.*, c. iii.

<sup>2</sup> 5 Eliz. c. 18.

<sup>3</sup> 8 Hen. VII. fol. 6 and 8, and 18 Eliz. c. 9.

<sup>4</sup> 6 Ed. III. Way 2; 8 Ed. IV. fol. 9, and 27 Hen. VI. fol. 9.

<sup>5</sup> 8 Hen. VII. fol. 6.

holder, on the other hand, did not possess these adjuncts of the highway, and was therefore exempt from the liability arising therefrom.<sup>1</sup> A distinction must here be made between a king's highway and a common way. The former may be defined as a route leading from town to town, the latter as a route leading from a town to lands.<sup>2</sup> Over the former the leet held jurisdiction, and it was a special duty of this court to examine into cases of neglect and impose the fines inflicted by the statute.<sup>3</sup> Over the latter, on the other hand, the leet had no powers, and any annoyance about a private way, even if it was the only route to church, would have to be taken before the Assize of Nuisances.<sup>4</sup>

But the system of compelling every parish to repair its own highways was an unjust one, and the employment of gratuitous labour a hardship on the agricultural community. Take for example the case of the great North Road, which traversed a poor and thinly inhabited district. The six days' enforced labour was wholly inadequate to keep in repair a route worn by the immense traffic between London and the West Riding of Yorkshire. The extra expenditure being defrayed by parochial rates, raised such a clamour from the heavily mulcted parishes that the outcry penetrated the precincts of the Parliament House. This brought about the statute of 15 Car. II. c. 1, which, by introducing the system of turnpike tolls, initiated a new departure in highway legislation.

Another important duty of the leet was to see that the law was properly observed regarding water rights. Here a fundamental distinction has to be made between water that ebbs and flows and water that merely flows or is stagnant.<sup>5</sup> The former is considered by law an arm of the sea, and is under the jurisdiction of the king as Lord of the Narrow Seas, and the right to fish or boat therein is common to all. The latter

<sup>1</sup> 8 Ed. IV. fol. 9; 27 Hen. VI. fol. 9; 6 Ed. III.

<sup>2</sup> 3 Ed. III.

<sup>3</sup> A lord of the manor could not be compelled to repair bridges over the highway. 2 Ed. IV. fol. 9.

<sup>4</sup> 33 Hen. VIII. fol. 29.

<sup>5</sup> 22 *Book of Assize*, 93.

is the property of the landlord, for the soil that it covers is considered his freehold, and as such gives him an action for trespass against fishers and other intruders.<sup>1</sup> The law protects the riparian owner who, by the constant but palpable action of water running between his lands and another's, loses soil.<sup>2</sup> There is, however, no such redress where the water constitutes an arm of the sea. But, as has been already pointed out, the rights and liabilities of riparian ownership had not been regulated with that legislative nicety to which we of the nineteenth century have attained. As long as the highways were not injured there seems to have been little cause for complaint in an agricultural age where land drainage was seldom practised. If a man's mill was deprived of its natural water supply,<sup>3</sup> he could bring his case before the Assize of Nuisances; and if some flagrant case of drowning land occurred, such as the neglect of a riparian owner to repair a wall of the Thames,<sup>4</sup> the Court Leet would redress the injury, otherwise the artificial backpoundage of watercourses did not at this period give rise to much litigation. Nor in an age when sanitary science was as yet in its infancy was there much outcry against river pollutions, unless a man possessed ocular proof (or what he imagined to be ocular proof) of damage to the health of his livestock, such as was caused by the watering of hemp or flax in the streams or pools where they were accustomed to quench their thirst.<sup>5</sup>

A third duty of the leet was to examine into cases of illegal distress. The lord could only levy distress for rent on lands held by him, though the king might do so even in the common street or highway.<sup>6</sup> The direction in which future legislation would tend is evidenced by the reservation of fixtures like a millstone, windows,<sup>7</sup> and doors, of stock-in-trade like fats in a dying pan,<sup>8</sup> of standing crops like corn in shock,<sup>9</sup> of other's possessions like some man's coat in a tailor's shop,<sup>10</sup> etc.

<sup>1</sup> 22 Ed. IV.; 18 Ed. IV. fol. 4.

<sup>2</sup> 22 Ed. III. fol. 22.

<sup>3</sup> 6 Ed. IV. fol. 37; 2 Hen. IV. fol. 22.

<sup>4</sup> 7 Hen. IV. fol. 9 and 32.

<sup>5</sup> 38 Hen. VIII. c. 17.

<sup>6</sup> 9 Hen. VI. fol. 9, and Marlebridge, c. 15.

<sup>7</sup> 14 Hen. VIII. fol. 29.

<sup>8</sup> 21 Hen. VII. fol. 18.

<sup>9</sup> 21 Hen. VII. fol. 41.

<sup>10</sup> 10 Hen. VII. fol. 22.

Yet another duty of the leet was the adjudication of poaching offences.

Public opinion had now for some centuries been tending towards a mollification of those severe forest laws which had been initiated by the royal sportsmen of the Norman dynasty. It is true that Charles I. had been so misguided as to attempt their revival,<sup>1</sup> but since his attempt proved abortive, we may forgive his folly, because by allowing Harvey to experiment upon the royal deer, he helped forward that famous discovery of the human vascular system, which has added both to the national renown and the welfare of mankind at large.

It appears that offences under the head of poaching were divisible into felonies and trespasses. It was to the Court Leet that the former, and some too of the latter, were brought, and to the Court Baron the latter only. Let us first examine, as an example, the most important item in the long list, viz. that of deer. Though it was no felony to steal any wild beast found in its wilderness,<sup>2</sup> it was so to kill or even chase the lord's deer out of his inclosed lands, and was punishable as such in Court Leet.<sup>3</sup> Imprisonment and fine overtook those not having parks, chases, or forests of their own, who kept deer-hays or buckstalls, or without license stalked with bush or beast in other's preserves;<sup>4</sup> or who by force of arms took deer, or hunted by day or night with vizards or painted faces.<sup>5</sup> But these offences were trespasses only, though the last of the list had not long ceased to be a felony. These, then, occupied the business of the Court Baron. The punishment was, however, so severe, amounting to heavy fines and long terms of imprisonment, and even outlawry should the offender fail to pay, that it is doubtful if this court's authority extended beyond a commitment of the culprit to the ensuing assizes. It must, too, be borne in mind, that forest laws and customs were quite distinctive from those of other game preserves. No common person could possess a forest, which originated by commission and

<sup>1</sup> Lord Holland as Chief Justice in Eyre held a Court almost yearly for the recovery of Charles' forestal rights. Hallam, *Hist. of Engl.*

<sup>2</sup> Stamford, fol. 25.

<sup>3</sup> Id., *Ibid.*

<sup>4</sup> 89 Hen. VII. c. 11.

<sup>5</sup> 81 Hen. VIII. c. 12.

proclamation, and had its own laws, its own officers, and its own courts. The offender therefore would be brought before a jury of forest swains and freeholders, and judged by the particular verderer who happened to be for the time being steward of the swainmote. Happily for the prisoner this court could only try and convict, judgment being reserved for the court of justice seat. But even then it seems as though a suspected party would run a poor chance of acquittal. The laws respecting venison and vert were complicated, and it is questionable whether the person accused of interfering with the deer of a chase or park would fare better at the hands of the Leet Jury or manorial suitors than at those of the forest "sweins." The lord was an interested party, and the juries of all three courts his tenants, while the judges were his servants. There is a vagueness about this game legislation which, when combined with the nature of its tribunals, savours of injustice. A man may chase a wild hart, or an escaped and proclaimed one.<sup>1</sup> He may drive a deer back into its chase by means of a little dog, if it be on his own ground. The dog may even follow and destroy it with impunity, if its master can prove that he used all practicable means to restrain it; but to have driven it away with beagles would have rendered him liable for trespass.<sup>2</sup> Then again, a man and his dog take a stroll in the neighbourhood of a deer park, the dog breaks leash and chases the deer,<sup>3</sup> and the law holds the master blameless; but who save an eye witness can prove whether the dog really did break away, or was urged to the chase by his owner? Let us trust that the sporting blood of the English juryman overruled all considerations of self-interest when the unfortunate prisoner awaited his verdict.

The destruction of fish fry in any waters or rivers, salt or fresh; the killing of trouts and salmons out of season; the taking of pike, salmon, trout or barbel under certain prescribed sizes; the capture of any fish save by angling or by 2½ inch meshed nets, the attempt to steal the lord's fish by the

<sup>1</sup> 21 Hen. VII. fol. 30.

<sup>2</sup> 48 Ed. III. fol. 8.

<sup>3</sup> 18 Hen. VI. fol. 21.

destruction of a pool dam were all offences punishable with fines by stewards of the leet.<sup>1</sup>

To kill or destroy winged game by night with snares or other devices, to break into a pigeon-house and steal the fledgling inmates,<sup>2</sup> to hawk or hunt with spaniel amidst growing grain, to trace hares in the snow with dogs, to capture young goshawks bred in a park, were also felonious acts,<sup>3</sup> and therefore subject to the leet's jurisdiction. To take, however, doves without the dovecote,<sup>4</sup> hawks or their eggs, to enter into a warren and capture rabbits,<sup>5</sup> to take the eggs of herons, to intrude on a pheasant preserve and remove the inmates, or to fly a hawk and kill game therein,<sup>6</sup> all these were acts of trespass, and therefore subject to the manorial court's jurisdiction.

There comes now a strange distinction. No artificer or layman not possessing lands to the value of forty shillings per annum, and no clerk not earning ten pounds per annum, might keep a sporting dog, or use ferrets, hays, nets, harepipes, cords or other engines to take or destroy wild beasts upon pain of a year's imprisonment.<sup>7</sup> Such offenders were neither answerable to the Court Leet or Court Baron, but had to appear before a justice of the peace. If, however, they or any other person were detected hunting or hawking within the park, chase, warren or demesne lands of the lord without his license, they had to answer for their illegal action at the tribunal of the Court Baron.

We have pointed out in this chapter certain points with regard to these mediæval courts of a condemnatory nature. Let us then, conclude with a word or two of praise. How often in modern times have not those who frequent a County Court heard its bewildered president exclaim : "This case ought never to have been brought before me ; it is one for experts, I shall refer it to arbitration." Now that is just where the judges and juries in these old-world courts were so useful. The

<sup>1</sup> 11 Eliz. c. 17.

<sup>2</sup> This is doubtful, compare 18 Hen. VIII., and 18 ed. 4, fol. 8.

<sup>3</sup> 18 Eliz. c. 10.

<sup>4</sup> 12 Hen. VIII. fol. 4.

<sup>5</sup> 8 Hen. VI. fol. 58.

<sup>6</sup> 38 Ed. III. fol. 12.

<sup>7</sup> 18 Rich. II.

experts in the fairs at buying and selling made excellent jury-men in the Courts of Pyepowder. The forest freeholders who looked after the game were equally calculated to understand the judicial business of a Swainmote, the jury of presentment in Court Leet knew every character in the district intimately, and the suitors of the Court Baron were masters in all the intricacies of feudal tenure. In this respect, then, our modern tribunals are at a distinct disadvantage, which a greater pre-disposition to impartiality alone can compensate.

## The Stuart Period.

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### CHAPTER XXX.

#### THE BUSINESS OF THE COURT BARON.

WHEN as a guest one wanders from room to room in some old country house built in Gothic or Tudor days, one may wish to discover the particular apartment in which the seignorial court once held its sittings. There is an old south country manor in which the choice lies between several oak-wainscoted rooms on the ground floor, until in the wall of one there is discovered a secret staircase, ascending which the searcher finds himself in a tiny oak-panelled apartment. Crouched in what recalls to mind the smallest box of some minute provincial theatre, he is in a position to gaze down on the apartment below, and in fancy picture the scene of a mediæval Estate Court. The ghosts of long dead steward and suitors arise before his eyes; he sees the anxious faces of copyholders, and hears their plaints. He clothes the actors on this old-world stage in their picturesque Elizabethan garb, and listens to the quaint English of the speakers. He grows confused over tenancies in dower and fee, at will and for years, in curtesie and frank marriage, and hopelessly mixes up formedon, wardship and livery of seisin with half-a-dozen other incidents of feudal tenure. He wonders at the stiff formalities of a bygone chivalry, and welcomes as modern and natural, the half-stifled yawn of the lord's bailiff as he wearies over the long morning's sitting. The oaken surroundings were not so black and polished then as they are this year of Grace 1891, but that official-looking chair there, in which the steward is just stretching himself, is in other respects the same as it is now, and the long oak table

before it, at which a suitor, proud of his literary skill, has just ostentatiously dusted over with sand the curious hieroglyphics which represent his notes of the case now occupying the court's attention, is the same as that littered to-day with our host's nineteenth-century writing materials.

In discussing the principal business which occupied the Court Baron of the Stuart period, we must however be careful to weed out whatever the great Land Act of the Restoration had destroyed. Theoretically, all the military surroundings of the feudal constitution had been swept away. Practically, this was not entirely the case. The people had bargained with their king to pay him an equivalent for his losses in the abolition of the feudal incidents unnecessary to the land tenure of more peaceful times. Consequently aids, primer, seisin, escheats, marriages, wardships and petit serjeantry were all more or less put an end to by this contract betwixt king and people. What this king thus sold to his English subjects, George II. about a century later made a free gift of to his Scotch subjects. But in both instances many incidents of feudalism survived in a modified form. Take for example one of the most famous, viz. that of escheat. Even now the forfeited lands revert to the king disburdened from the dower of the wife; and though the royal reversioner satisfies the creditor at whose suit the outlawry is prosecuted, he does so *de gratia* and not *de jure*.<sup>1</sup>

So, too, in dealing with that special branch of escheat concerned with the defects of heritable blood, the statute of Charles II. did not abolish the *ultimus hæres*, but since that Act a tacit understanding supported neither by judges' ruling nor legislation has replaced the lord as such with the king. When, too, the peculiar political exigencies of the case arising in the reign of George I. demanded severer legislation, there is no doubt that the so-called Clan Act of that reign was framed on the traditional lines of the old feudal escheat.<sup>2</sup>

Another example where a feudal incident was modified, rather than abolished outright, to meet altered circumstances, is the case of wardships. For some time past the judgments of the

<sup>1</sup> Dalrymple, *Essays, Tenures.*

<sup>2</sup> Id., *Ibid.*

Scotch courts and the humanity of the English superiors had in both countries tended towards placing the minor's person in the hands of his relations rather than of his lord. The statute of 12 Car. II. did not abolish either this incident or that of marriage; but ever since the Revolution both have been exacted by the Crown with the utmost leniency, and it has always been found necessary to appoint guardians by will, or (failing that) by the Court of Chancery, because infants under twenty-one years could not be expected to manage efficiently their own estates. Then too (the statute of 12 Car. II. notwithstanding) reliefs continued to be levied on the death of tenants on lands held by a rent in fee simple. A single instance of the aid survives now-a-days in the custom of Parliament to grant one for the dowry of the king's eldest daughter; and the scutage payment has changed from a feudal perquisite into a national land tax. It might have been thought that the heriot or custom of rendering the best beast on the tenant's death, which was fair enough when all his live and dead stock belonged to his lord, might with justice have been abandoned, now that he stocked his farm out of his own capital, but this practice also survives.<sup>1</sup>

The purely agricultural as opposed to the military element of course remained. The tenures by copy of Court Roll, in which the villein's relationship with his holding had become, as it were, crystallised into a right, to which the archives of the manorial muniment room had afforded a title protected by law, had gained a modified but a fresh lease of life by the statute now under examination. There were three forms of this peculiar tenure. In some cases landlords, less vigilant in maintaining their rights than others, had allowed hereditary powers to their copyhold tenants, in other cases they were determinable at the death of the occupier. To both these the custom of the heriot still adhered, to the first of the two that also of the wardship and fine.<sup>2</sup> The third form of copyhold tenure was that of ancient demesne. It consisted of those lands or manors which though now perhaps granted out to

<sup>1</sup> Blackstone, *Comm.*, bk. ii., chap. vi., par. 1-10.

<sup>2</sup> *Id., Ibid.*

private persons, were actually in the possession of the Crown either in the Confessor's or Conqueror's lifetime. The old villein services, such as ploughing the king's land, supplying his court with provisions, etc., had long ago been commuted into pecuniary rents, but the privileges surrounding these tenancies still existed. They were allowed to try the rights of their property by the process called "writ of right close," in a peculiar court, which, though a Court Baron, was specially termed the Court of Ancient Demesnes.<sup>1</sup> They were exempted from tolls and taxes, expenses of knights of the shire, sitting on juries, and the like. They were so close to being freeholders as to have been called such by Bracton, though he distinguishes their class by the term of "sokemen." They were also recognisable from common copyholders by their inability to convey their lands by the general law of feoffments, being compelled to surrender them to the lord or his steward.<sup>2</sup> Their copies of the Court Roll stated that they held their lands according to the custom of the manor, and not at the will of the lord. This form of copyhold tenure, now termed customary freehold, still survives, chiefly in the North of England. How then did the Act of 12 Car. II. affect the various tenures by copyhold? Simply by reducing all lay tenures (for we must except that in frankalmoigne) to two distinctive species only, viz. free tenure in common socage and base tenure by copy of Court Roll.<sup>3</sup>

From that date then the business of the manorial court was confined to matters affecting socage and copyhold tenures solely. The copyholder's estate was secured to him as of right against all persons except the lord. Before the reign of Elizabeth he was not protected by the king's writ, but could only assert his rights in the seigniorial court. He could not appeal against his lord's judgment to the king's Court of Law, but had to file a petition in Chancery. At the time now under discussion he had obtained the power to recover possession of his holding

<sup>1</sup> Williams, *Law of Real Property*, ch. i., of Estates in Copyhold.

<sup>2</sup> Blackstone, *Comm.*, bk. ii., ch. vi.

<sup>3</sup> *Id.*, *Ibid.*

from his lord or a stranger, in an action of ejectment brought at common law.<sup>1</sup>

As the lord possessed rights to mines and timber, the suitors of Court Baron had often to adjudicate on questions of waste, such as arose when a copyholder opened mines, cut down timber, or committed permissive waste in neglecting to repair.<sup>2</sup>

So far the business of the Estate Court has referred to the subject matter of tenures by copy of Court Roll. But this in no way exhausts the list of duties to which the suitor of a Court Baron lent his ear. The work of the assembly had in fact grown so complex as to have for some time necessitated a subdivision of its business under different headings. Thus much was heard by those special meetings of the Court Baron in which only copyholders were suitors, and to which the distinctive appellation of Customary Court was affixed.<sup>3</sup> As has been already pointed out, the steward was judge in this and all other forms of the Court Baron when all the suitors held base tenures. But it must be remembered that the great dignitary who appended his name to what was generally termed the Court Baron, was the feudal chief of many tenants in subinfeudation; so that affairs relating to freehold estates in land came to be discussed in a separate branch of this assembly, which was held under the same jurisdiction, and at the same place and time as the Court Leet. At this meeting the suitors were composed of freeholders. Here, too, the statute of 12 Car. II. had, metaphorically speaking, beaten the sword into a ploughshare. All the stately incidents of military feudalism, saving those already excepted, had vanished. Homage, fealty and knight service were but memories of a past polity wherein the peaceful arts of agriculture had been strangely confused with the stirring episodes of war. In the Estate Court of the freeholders thus distinguished from the Customary Court of the freeholders, and from that, too, of ancient demesnes, the various kinds of freehold property, together with their rights or wrongs, engaged the attention of the baronial suitors. Their

<sup>1</sup> Williams, *Real Property*, Pt. iii., of Copyholds.

<sup>2</sup> Kitchen, *Court Leet*.

<sup>3</sup> Jacobs, *Law Dict.*, Court Baron.

duties were principally directed to those intricate points of law connected with the taking and passing of estates, surrenders of admittances and the like, in the which also the homage jury took care that their lords did not lose their suits of court, that rents and heriots were paid, lands and tenements kept in repair, all common and private nuisances prejudicial to the lord's manor presented, and public trespass punished by amercement.<sup>1</sup> Here tenants in fee simple and tenants in fee tail of estates of inheritance appeared to defend their rights or redress their wrongs. Here tenants for life underwent impeachment for waste. Here tenants by the courtesy of England proved their titles. Here ladies sought protection for their tenures in dower. Here, too, the already disused, but still legal, estates in frank marriage had their complicated machinery set in motion. Another large portion of the freehold suitors' time was directed to offences against common rights. He that did not possess rights to what was called "common without number," could not charge the pasturage with more than a fixed number of beasts. He who had what was called "common appendant," could not turn into the waste beasts not commonable, such as hogs, goats, and geese; nor could he get gravel (except for the highways), or dig turf, or build a house, or make inclosures there without the lord's special license. These restrictions did not, however, apply to commons appurtenant. An offence termed "rechasing" also came before the freehold suitors in this branch of the Court Baron, where a farmer holding lands in two manors, who had overstocked one with the beasts of the other, had to compensate his lord for the offence. Trespass on the lord's demesnes, removal of meerstones, pound breach, encroachments, letting copyhold lands beyond the prescribed period of a year and a day, improper husbandry, neglect of suit to the mill, trespass in pursuit of game, and in fact any offence, save the most trivial, which was calculated to defraud the lord or neighbour of his manorial rights, were inquired into at this particular Estate assembly.<sup>2</sup>

<sup>1</sup> Jacobs, *Law Dict.*, Court Baron.

<sup>2</sup> Id., *Ibid.*

There was a fourth branch of the Court Baron, resembling our modern County Court, in which the freeholders claimed jurisdiction for trying actions of debt, trespasses, etc., under 40s., and which was held every three weeks. Unlike the jurisdiction peculiar to the county tribunal, there were no powers in this assembly to make execution on recovery of debt, but the defendant's goods might be distrained and retained till satisfaction was made.<sup>1</sup> The effect of such a system as has been now described in detail, was to advertise throughout the honour or manor the legalities and illegalities peculiar to each separate landed property. No one could extenuate an offence, much less evade its legal consequences. The estate steward was not so much the policeman of the district as the head of its police. Every freeholder or copyholder had probably, some time or other, been a suitor, and as such had shown his respect for the law by dispensing its justice. A judgment pronounced by him on other offenders warned him for ever afterwards against offending in like manner. He who had been plaintiff one month might be defendant the following month. He who stood before the judgment of his neighbours one time might be sitting in judgment on some of them another. He who had helped to condone an offence then might be suffering from a similar offence now. A severe view of a doubtful act inspired to gratify private malice, or any undue display of favour, might establish a precedent which would some day cause injustice to him who had initiated this very form of injustice. The lord was too much hedged in by the evidence of his rolls and the publicity of his actions to be unjust, the steward dared not be, and the suitors were disinclined to be.

The business, then, relating to tenures and customs of the manor was, it seems likely, well managed. Not so the offences foreign to these matters. Poaching, we have already said, was vigorously discountenanced, and scant justice meted out whether offenders were haled before the tribunals of the Leet, Baron, or Forest. The poacher was of another class altogether, neither politically nor judicially represented, and there was

<sup>1</sup> Jacobs, *Law Dict.*, Court Baron.

no inducement for either lord, steward, or juror to treat him with leniency.

The survival here and there, in these prosaic and bustling times, of some form of an ancient court is a circumstance which adds reality to their almost forgotten past. It is doubtful, however, if the busy lawyer who generally represents his employer as steward, appreciates this side of the question at its full worth. We have had opportunities of discussing the subject with one or two, and were disappointed to find that the old distinctions between Courts Leet and Baron had vanished so completely as never to have occurred to the minds of their modern presidents. Nor had any of these old assemblies retained one tithe of their original importance even at the period of history that we are now discussing.

We have been at pains to collate the principal subject matter of a series of presentments belonging to several manors in Lancashire,<sup>1</sup> and extending over the early half of the eighteenth century, and have found that the most trivial topics of estate management alone occupied the jurors' attention. Formidable indeed is the charge of the seneschal, with its long roll of ill deeds punishable by death; but the actual business which follows is such that the landlord's agent and tenantry of the Victorian era would amicably settle after half an hour's discussion in the estate office. The jury appoint their burleymen, lawmen, house looker, moss reeve, affeerer, and court bailiff, and the Court Roll records the names of these worthy rustics as well as lists of jurors, members of the court, watercourses ordered to be cleansed, etc. After that we read of Lawrence Worthington being ordered to cut a ditch through a neighbour's tenement, of James Dewhurst compelled to erect a fence, and of some one else having to repair a house. Then certain edicts of the homage are enrolled with the object of protecting vested manorial interests. For this reason we find that no one is to pasture or put any goods on the manorial moss between May and 25th July; that in order to prevent the immigration of any tenants or poor people, no member of the

<sup>1</sup> Thornley, Weston and Chipping, belonging to the Earl of Derby.

manorial community may let a cottage to any person not having legal settlement in the district. Occasionally the roll records a penalty for some one's offence in "projecting" on a highway, and fixes the fines for owing suits and not appearing. The inhabitants of some village are ordered to lay ashes or muck on the highway, and each to keep his house in proper repair. Christian Helme is made to turn his water from Gib Hey Lane before the feast of St. John the Baptist; John Berne is stopped putting cattle on Piseloche Common; the villagers of Chipping must construct a pound; an escheat is made out against Edward Hawkinson, who defies the order by pre-deceasing its execution; Robert Eales for having some one else's wife as a lodger is heavily mulcted and compelled to remove the woman from the manor.

Such business as this, partly that of a modern Local Board, and partly that of a modern land agent, occupies the principal attention of the court. Schedules and valuations are periodically ordered to be made of the manorial leasehold, freehold and common lands; or a fresh enquiry is determined upon by the jury concerning the lord's boundary; or an affidavit is wanted about a right of road; or some poaching affair crops up to vary the monotony of these everyday occurrences, and this represents the sum of all that survives of that jurisdiction which under the old Saxon terms of sac, soc, toll and team made the landlord of the mediæval era both powerful and opulent.

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The half of a great subject has been now brought to a conclusion. Before the pen is laid aside, let us glance briefly over the events hitherto chronicled. We have beheld the surface of England's soil trodden by the hoof of a pastoral community's cattle, and we have watched it turned over by the successive ploughs of Roman, Saxon, Norman, and Englishman. We have described its very depths as stirred by the tin miner, chasmed by the iron founder, and tunneled by the collier. We have studied the fortunes of its cultivators, and have followed the exaltation of the husbandman from slave to gebur, from villein to copyholder, and from free-farmer to

yeoman. We have seen all the profits of the land absorbed by the wants of a warlike age, until every difference in its tenure had acquired some military significance ; and we have seen the peaceful art of agriculture emancipate itself from the obstructive influences of strife and chase.

We have accompanied the Englishman throughout his struggles for freedom ; from his successful retention of communal rights during the period of his slavery, until as a free agent he can dispose of his labour services in whatever market he chooses. We have shown how the innate freedom of the Anglo-Saxon rebelled against the mediæval lawyer's attempts to enslave him, and we have seen how the civilizing effects of Norman refinement raised the tone of the national character. We have traced the system of agriculture from the first rude attempts to reclaim forest and morass, to the economy observed on lord's demesne, common field, and waste, to be replaced in its turn by the enclosure system. We have noted the improvement in grain crops, and seen pulse crops supplement them. From the dual cultivation of corn and fallow, to the trinity field system, and from that to the four-course rotation, we have carried forward the nation's methods of husbandry. Livestock have been bettered in breed and condition, winter feeding has come into use, fresh vegetables have taken root in the kitchen garden and fresh fruit trees in the orchard. Scurvy and famine have ceased to decimate the rural population in early spring. A great middle class has sprung into being, and the labourer has obtained an important if not political status in the national ranks. His cottage has been fitted with chimneys and his garden brightened with flowers. There remains only to add a slopstone and gully to his kitchen, connect his refuse heap with a line of drainpipes, and he will do well enough till he shall have educated himself to the dignities of the national polling booth. Lastly, we have studied England's acres as they were successively possessed by families and tribes, by overlords and allodialists, by thanes and barons, and by noblemen and squires. We have passed through the stages of land conveyance, from symbol to charter and from charter to deed. We have jotted down each phase

of the struggle over its hereditary rights, from the statute of Quia Emptores to that of De Donis, thence to the application of common recoveries and the legislative attacks of Henry VIII.'s reign, until we leave estates tail in much the same stage as conditional fees were in at common law, before mediæval lawyers framed the Act of De Donis. The tenant in tail could, at the period in which we take leave of him, aliene his lands and tenements not only by fine and recovery, but also by other means; he was liable to forfeiture for high treason, and he could charge his estates both with reasonable leases, and with such of his debts as were due to the Crown, or had been contracted with his fellow subjects in a course of extensive commerce.<sup>1</sup> This was not the free trade in land which is the dream of the modern Radical, it did not affect reversionary interests one tithe so severely as the recent Settled Estates Acts have done; but it was a step towards that Elysium which alone would seem to satisfy the landless interests of this present age.

The task yet before us is to carry down to the present date this study of the great English landed interest, and in so doing describe how its exclusive proprietary rights were bit by bit abandoned through the moderation of an enlightened age; how its system of agriculture improved under the beneficent guidance of science, and how its worst customs were altered in obedience to the advanced spirit of these later times. We have seen enough both of English noble and peasant, to be sure that a wise spirit of compromise will order all the changes about which we still have to speak, as it had ordered most of those already recounted; and we shall be sure that the sense of moderation which even curbed the repressive tendencies of an aristocracy in the zenith of seigniorial jurisdiction, will unite with that independence of character which clung to the peasant in the most degrading days of his serfdom, until this country of England shall have become, what at this day it has long been, a beacon light to the foreigner still groping after freedom.

<sup>1</sup> Blackstone, *Comm.*, bk. ii., ch. vii.

## GLOSSARY.

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### A:

*Acre-Shot*=Tax imposed on the lands of the Great Level.

*Ads*=A carpenter's tool used by the Tudor farmer to even flooring and hollow-out pig troughs.

*Afferers*=der. afferatores, affidati: persons appointed upon oath by the Court Leet to set fines on such as committed faults arbitrarily punishable.

*Affri or Avers*=Cart horses.

*Agistment*=Pasturage of other men's livestock on the popular, royal, or seigniorial wastes.

*Agnation*=System of marking the descent by the male line.

*Agrimensor*=Land Surveyor.

*Akermanland*=The ploughman's perquisite in land.

*Amercement*=Peuniary punishment of an offender against king or lord.

*Arcuum munition*=The furnishing of bows for warlike purposes.

*Assise of novel disseisin*=A remedy, maxime festinam, for the recovery of lands, etc., of which the party was disseised, called *novel disseisin* because the Justices in Eyre went their circuits from seven years to seven years, and no assise was allowed before that which commenced before the last circuit, and which was called an ancient assise, in contradistinction to an assise of novel disseisin, viz., one commenced since the last circuit.—*Jacob's Dict.*, sub voc. “Assise of Novel Disseisin.”

*Averagium*=The villein's service for the lord's carting.

*Averland*=The teamer's perquisite in land.

### B.

*Barley Cradle*=A three-forked wooden instrument on which the corn was caught as it fell from the scythe.

*Baron and Feme*=Husband and wife.

*Bauern Gemeinde*=Peasants' community.

*Benefcium*=An estate in land granted for life.

*Bocland*=Public land, rendered private by charter.

*Brach*=A bitch of the hound species.

*Breve testatum*=The earliest form of a deed of conveyance.

*Browse*=Branches and sprigs of trees used as cattle food.

*Brycgbote*=The repairs of bridges (part of the Trinoda Necessitas).

*Burgage*=The villeinage system as applied to townspeople.

*Burhbote*=The repairs of the national defences (part of the Trinoda Necessitas).

*Buttrice*=Tool for paring horses' hoofs.

## C.

*Capitatio*=Poll tax.

*Carle*=Hemp which bore no seed.

*Ceapealthelum*=Anglo-Saxon ale-house.

*Censor*=Name applied to the two magistrates who presided over the Roman fiscal service.

*Ceorl*=A freeman who was not noble.

*Cestui que use*=The party to whose use any other person is enfeoffed of lands.

*Cheeseland*=The Deye's perquisite in land.

*Cniighthade*=The term applied to the Anglo-Saxon youth when over eight and under fifteen years of age.

*Cognition*=Kinship by the mother's side.

*Colonia*=A military land settlement.

*Common appendant*=A right to put beasts of the plough, or such as manure the ground, on the lord's waste, and confined to freeholders as the successors of the original cultivators of the common field in the tribal village.

*Common appurtenant*=A right of pasture on the lord's waste, extended to hogs, goats, etc., as well as beasts of the plough or such as manure the ground; and enjoyed by tenants of land not anciently arable, such as pasture or land reclaimed from the waste within the time of legal memory, or for land that is not freehold, but copyhold.—*Blackstone*, bk. ii., ch. 8; and *Vinogradoff*, p. 266.

*Common of pasture*=The right for all the villagers' cattle "levant e couchant en le manor," to feed on the waste.

*Common of estovers*=Comprehends allowances of housebote, hedgebote and ploughbote out of the waste.

*Common of piscary*=Rights to fish on the waste.

*Common of turbary*=Rights to dig turf on the waste.

*Common of vicinage*=Where two neighbouring villages have inter-communed with one another, so as to allow their beasts to stray over the fields of each.

*Compurgator*=The person whose oath helped to establish the innocence of the accused in the Court Leet.

*Contenement*=A man's necessary stock in trade.

*Corporal and incorporeal hereditaments*=The former consists of such as affect the senses, the latter only exist in contemplation.

*Corodies*=Provision and maintenance of baronial dependants.

*Crome*=A dung rake.

*Curtesie of England*=The life tenure by a husband of his deceased wife's estates in fee simple, when he has had issue by her of those who might succeed.

## D.

*Decuma*=Roman State dues from the land's produce.

*Denshiring*=Paring, drying, heaping and burning of turf.

*Dew retting*=Spreading of hemp on a water meadow.

*Deye*=Dairy woman.

*Didall*=A sharp triangular spade.

*Dorf*=A German village.

*Dominium*=Seigniorial rights over land.

*Douer plow beetle*=A large beetle-shaped iron instrument fixed to the plough, partly in order to prevent the furrow glazing, partly to cover the seed.

*Drageum*=An inferior barley.

## E.

*Emphyteusis*=The farming of lands to military tenants: derivation, ἐμφύτευσις, I graft on, because a second dominium was grafted on to the original seigniorial ownership.

*Endogamy*=Intermarriage of the members of a tribe.

*Eorl*=A noble.

*Eorldorman*=The head magistrate of a shire.

*Esogamy*=Equality by marriage.

*Essoin*=An excuse, such as sickness or infirmity, raised by one summoned to appear or answer to an action, or to perform suit to a court Baron, etc.

*Estovers*=Necessaries of life taken from the waste by popular usage.

## F.

*Feldmarck*=German lands held in villeinage.

*Feme covert*=Married woman.

*Feoffment*=Grant of manors, etc.

*Feuar*=North country term for tenant.

*Feud, Feu, Fief*=A right to lands and hereditaments held by performance of military service.

*Fiction of Common Recovery*=See page 252.

*Finble*=The early yellow variety of hemp.

*Fine*=A final agreement or conveyance upon record, for the settling and assuring of lands and tenements.

*Formedon*=A writ that lieth for him who has a right to lands or tenements by virtue of any entail.

*Frank Marriage*=Where a man, seised of land in fee simple, gives it to another with his daughter, sister, etc., in marriage, to hold to them and their heirs.

- Free bench*=An estate in copyhold, which the wife had on the death of her husband for her dower according to the custom of the manor.  
*Frithborg*=Pledge for the keeping of peace.  
*Frower*=An iron tool for cleaving laths.  
*Frumstal*=The master's seat in the Anglo-Saxon house.  
*Fundus*=A Roman farm.

**G.**

- Gafol*=A tax.  
*Gafol earth or erth*=Plough work on the demesne.  
*Gau*=Germanic common ground.  
*Gavelmanni*=Tenants paying rent in money.  
*Gebur*=The owner in villeinage of a yard land.  
*Gemeinde*=Germanic community.  
*Gemeindes angur*=Germanic common pasturage.  
*Geneat*=A term embracing all the tenants in villeinage.  
*Gens*=A group of families possessing blood relationship.  
*Gerefa*=The king's representative in the Court Leet.  
*Gesetland* }  
*Gesithland* } =Land in occupation of the villeinage.  
*Gesithcundman*=The companion of a king or noble.  
*Gofe*=The pile of hay or straw in the barn.  
*Ground clouts*=The wooden part of a plough that was generally made out of old streaks of wheels.  
*Goût de terrain*=That occult virtue in a soil which imparts to grapes the flavour of a choice vintage.

**H.**

- Haeg* }=An enclosure.  
*Hay* }  
*Headborough*=Chief man of the Frankpledge in boroughs.  
*Heretoch*=A general: derivation, "here," an army; "toecu" or "togu," to lead.  
*Herzog*=A German lord of the manor.  
*Hof*=The German manor.  
*Hold*=A Danish noble.  
*Hörige*=The German villeinage.  
*Houselooker*=An official of the Court Baron which answers to the modern clerk of works.  
*Hundred*=Anglo-Saxon territorial division, similar to the Germanic pagus.

**K.**

- Kensos*=The tribute money.

**L.**

*Lac acidum*=Butter milk.

*Lac dulce*=New milk.

*Lønland*=A portion of the Folcland granted to an individual as a benefit for life.

*Landes Gemeinde*=Germanic land community.

*Lastage*=Seignorial toll on market produce.

*Lath*=Any piece of wood that can be split.

*Lawing*=The mutilation of dogs to prevent their overtaking game.

*Lenten earth*=Extra demesne work before Easter.

*Liberi tenentes per cartam*=Chartered freeholders liberated from all kinds of predial service.

*Livery*=Has three meanings: 1. A suit of clothes which a landowner gives to his followers. 2. A delivery of possession to those tenants who held of the king in capite or knight's service. 3. The writ which lay for the heir, when of age, to obtain possession or seisin of his lands at the king's hands.

*Livery of seisin*=A delivery of possession of lands, etc., i.e. a ceremony used in the conveyance of lands by common law.

*Lodlands*=The teamer's perquisite in land.

*Louda*=A loaf of bread of a certain kind.

**M.**

*Maslin*=A mixture of rye and wheat made into bread.

*Meake*=Implement with handle five feet long, for cutting peas.

*Micher*=Thief.

*Molmen*=Tenants paying partly in labour, partly in money.

*Morgengift*=The Anglo-Saxon woman's settlement in marriage.

*Mortmain*=An alienation of lands and tenements to any guild, corporation or fraternity, which had to be legalised by the king's license, because they were said to come into "the dead hand" when dedicated to God or pious purposes.

*Moulspear*=Instrument for destroying moles.

*Mutter Dorf*=Germanic parent village.

**N.**

*Nal*=An awl.

*Novel disseisin*=See "Assize of Novel Disseisin."

**O.**

*Occupatio*=Form of Roman land tenure applied to waste lands.

*Oustre le mains*=A livery of land "out of the king's hand."

**P.**

*Pack saddle*=An equipment used for the carriage of wool on horseback.

*Pagus*=A district in Germania comprising a group of vici.

- Panel or pannel*=A short saddle raised before and behind for small burdens carried on horseback.
- Paravail*=The last of the vassalage in the scale of sub-infeudation.
- Passage*=Seignorial toll for market produce carried over the manorial lands.
- Ped*=A saddle constructed so as to carry the milkmaid and her dairy produce to market on horseback.
- Percer*=A tool for piercing leather.
- Picage*=Seignorial toll levied on stalls as compensation for damages to the ground on which they were fixed.
- Piepowdre*=Curia pedis *pulverei*=A court of the mercatores stellati for the administration of justice at fairs. See page 226, note 1.
- Pod*=An old leathern bottle nailed to the side of a farm cart as a receptacle for tools.
- Pontage*=Seignorial toll for market produce carried over a private bridge.
- Pontium et viarum refection*=Repairs of bridges and roads.
- Portoria*=Roman State tolls levied on imported and exported merchandise.
- Possessores*=Rich squatters on the Roman Ager Publicus.
- Primer Seisin*=The first possession: i.e. part of the king's prerogative, whereby he had the entire profits for a year of all lands, etc., on his tenant's death until the latter's heir did homage.
- Primus inter pares*=A chief on terms of equality with his followers.
- Procurator fisci*=The head officer of the Roman civil service in each province.

**R.**

- Recognitors*=Jury empanelled on an assize: so called because they acknowledged a disseisin by their verdict.
- Res mancipi*=Property of which a person can dispose.
- Res nec mancipi*=Property of which a person cannot dispose.
- Retting*=The spreading of hemp on a moist site: if on a meadow it was called "dew retting," if in a pool it was called "water retting."
- Reve*=The popular representative of justice in the seigniorial court.
- Rifle*=The twisted handle of a scythe.

**S.**

- Sac*=The lord's manorial privilege of holding pleas in causes of trespass arising from his tenants.
- Scriptura*=Roman State agistment charge on livestock pastured on the Ager Publicus.
- Scutage*=The tax on knights' fees.
- Scyremote*=The court of the county.
- Seame*=A horseload of winnowed corn.
- Serlands*=The reaper's perquisite in land.

*Sherefa*=The president of the Tourm.

*Side clouts*=Wooden parts of a plough.

*Sith*=Scythe.

*Skavel*=A draining spade, four inches wide and eight deep.

*Skep or skuttle*=Basket narrow at bottom, wider at top.

*Skreine*=A basket.

*Soc*=The lord's manorial privilege to hold a court of justice composed of socmen.

*Spence*=The buttery or place where provisions were kept, sometimes also the feeding room.

*Sprig*=An inferior kind of barley.

*Stallage*=Seigniorial toll on booths at fairs.

*Staple*=Term applied to those parts to which wool had to be sent prior to exportation, for fiscal purposes.

*Swainmote*=The verderer's forest court.

#### T.

*Team*=Seigniorial privilege to possess and judge the bondmen and villeins of a manor.

*Terra Regis*=The Royal Manors.

*Thane*=The armed unit of the Anglo-Saxon host, who, after the Conquest, became identified with the knight.

*Theow*=Anglo-Saxon slave.

*Thryfallow*=The third of the three fallowings on the common arable field.

*Tirorum productio*=The duty of recruiting the ranks of the national army.

*Toll*=Seigniorial privilege of levying market dues.

*Totem*=The family symbol among the American Indians.

*Tourm*=Sheriff's court of the county.

*TrIBUTUM CAPITIS*=The income tax charged by the Roman State on the landed community.

*TRIBUTUM SOLI*=Tax charged by the Roman State on owners of personality.

*Trinoda necessitas*=The three national obligations on alodial ownership.

*Trust*=A right for any individual to receive the profits of land and dispose of the land itself as directed by the lawful owner.

#### U.

*Use*=The profit or benefit from lands and tenements.

#### V.

*Vautrer*=A lurcher boarhound.

*Vavassour*=The first of the vassalage in the scale of sub-infeudation.

*Vicus*=The Teutonic gens.

## W.

*Wainage*=The farmer's stock in trade.

*Wanty*=The sussingle or surcingle, i.e. a leathern girdle for fastening a horse's saddle around its belly.

*Wapentake*=The Hundred (which see).

*Warectatio*=The summer fallow, otherwise known as Twifallow.

*Wealh*=The Anglo-Saxon slave.

*Wergeld*=The fine for manslaughter.

*Were*=A fine.

*Werkenem*=Tenants paying rent wholly in labour.

*Whittlether*=The leather used for mending horse-collars.

*Wimble*=Wheelwright's tool used in cart repairs.

*Witangemote*=A meeting of wise men, hence the Anglo-Saxon Parliament.

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